

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 74-10A  
Z.C. Case No. 74-10A  
TMG 1333 New Hampshire Avenue, NW  
(PUD Modification of Consequence @ Square 115, Lot 85  
[1333 New Hampshire Avenue, N.W.]  
October 21, 2019**

Pursuant to notice, at a public meeting held on October 21, 2019, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of TMG 1333 New Hampshire Ave LLC (the “Applicant”) for a Modification of Consequence to Condition Nos. 6 and 14, and to the approved plans for a planned unit development (“PUD”) approved by Z.C. Order No. 101 (the “Original Order”), as further processed by BZA Appeal Nos. 11875 and 11901, and as modified by Z.C. Order No. 101-A, for property at 1333 New Hampshire Avenue, N.W. (Lot 85 in Square 115) (the “Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission APPROVES the Application.

**FINDINGS OF FACT**

**Background**

1. Pursuant to the Original Order, the Commission approved a PUD and a related Zoning Map amendment from the SP/C-3-B Zone Districts to the C-3-B Zone District (the “Approved PUD”) for the entire area encompassing Square 115 (the “PUD Site”).<sup>1</sup>
2. The PUD Site has a land area of approximately 66,854 square feet and is bounded by Dupont Circle to the north, 19<sup>th</sup> Street, N.W. to the east, Sunderland Place, N.W. to the south, and New Hampshire Avenue, N.W. to the west.
3. The Approved PUD authorized development of a 12-story building (the “1333 Building”) with a height of 130 feet, not including the penthouse, with retail space on the first floor and part of the first cellar level, and with four below-grade levels of parking.

<sup>1</sup> Z.C. Order No. 101 was approved under the 1958 Zoning Regulations. Under the 2016 Zoning Regulations, which repealed and replaced the 1958 Zoning Regulations effective September 6, 2016, the SP zone, which had been divided into the SP-1 and SP-2 Zone Districts, was designated as the MU-1 and MU-2 zones, and the C-3-B Zone District was re-designated to MU-8.

4. In addition to the 1333 Building, the Approved PUD included four other existing buildings, including the historic Heurich Mansion and Carriage House (collectively the “Heurich Mansion”), the Euram Building, and the Sunderland Building, all of which continue to exist and remain part of the Approved PUD.
5. The Heurich Mansion and Euram Building exist as they did at the time of the Approved PUD, the Sunderland Building was subsequently modified as permitted under the Original Order, as further processed pursuant to BZA Appeal No. 11875.
6. Pursuant to Z.C. Order No. 101-A (dated August 3, 1992), the Commission approved a modification to the Approved PUD. The approved modification made changes to Condition No. 7 of the Original Order to restrict certain uses in the first cellar level of the 1333 Building.

#### **Parties**

7. The only party to the Approved PUD other than the Applicant was the Dupont Circle Citizens Association (“DCCA”).
8. For purposes of the subject Application, the parties included DCCA and ANC 2B, the ANC within which the PUD Site is located.<sup>2</sup>

#### **The Application**

9. On July 30, 2019, the Applicant filed the Application requesting a Modification of Consequence of the approved plans and Conditions Nos. 6 and 14 to permit modifications of the 1333 Building’s ground-floor storefront, building façade, and penthouse level to address maintenance issues and meet current market expectations for office and retail space, and to make improvements to adjacent public space. (Exhibit [“Ex.”] 1- 2G2.)

#### **Penthouse Height (Condition No. 6)**

10. Condition No. 6 in the Original Order states that “[t]he new building shall not exceed 130 feet in height. Any roof structures in the [*sic*] excess of that limit, as normally permitted by the Regulations, shall not exceed 17 feet in height.” In order to accommodate the proposed modifications to the penthouse, the Applicant requested to modify Condition No. 6 to affirm the current 17’-2” penthouse height and allow the proposed elevator override height of 20 feet.
11. The height of the penthouse structure will remain at 17’-2,” with the elevator overrun extending an additional 2’-10,” for a maximum overall height of 20’-0.”

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<sup>2</sup>The Approved PUD predates the formation of the District’s Advisory Neighborhood Commissions (“ANC”), which were established under the 1975 Home Rule Act and Advisory Neighborhood Commission Act of 1975 and formally began operating in 1976.

Plans (Condition No. 14):

12. Condition No. 14 in the Original Order states that the final design of the 1333 Building will be based primarily on the plans approved by the Original Order, dated May 15, 1974. The Application proposed to modify Condition No. 14 to incorporate the new plans which included the following changes: (Ex. 2G1-2G2.)
  - a. Replace the existing recessed storefront system with a new storefront system that is installed in line with the main building façade at the property line to provide a more contemporary aesthetic and allow greater light penetration into the building lobby and ground-floor retail spaces;
  - b. Infill an existing 10<sup>th</sup> floor balcony by installing new windows that are closer to the outside face of the building, approximately two feet back from the property line, and consistent with the rest of the building;
  - c. Renovate the existing penthouse level to include new office space, shared amenity and storage space, and mechanical space, including refurbishment of existing elevators and two new elevators;
  - d. Patch and reinforce the existing precast façade, as necessary, and apply a light-colored elastomeric coating to the entire façade of the 1333 Building; and
  - e. Reconfigure and reduce the size of the stairways and light wells located within adjacent public space that lead down to the 1333 Building's first cellar level.
13. The Application provided evidence that on July 30, 2019, it served the Application on the parties to the Approved PUD - DCCA and ANC 2B - and the Office of Planning ("OP"), as attested by the Certificate of Service submitted with the Application. (Ex. 2, p. 6.)

**Responses to the Application**

OP

14. On September 10, 2019, the Applicant submitted supplemental information in response to questions received from OP. The supplemental information included additional renderings of the proposed penthouse improvements, information on building signage, and an estimate of the affordable housing trust fund contribution that will be required as a result of the proposed penthouse habitable space. (Ex. 5, 5A.)
15. OP submitted a report dated September 13, 2019 (the "OP Report"), that suggested changes to the language of Condition No. 6 of the Original Order and recommended approval of the Application. (Ex. 6.)
16. The OP Report concluded that the proposed modifications do not change the material facts on which the Approved PUD was based. The OP Report also noted that the proposed modifications would permit limited changes to certain façade materials and coatings, color

ranges, cladding, ground-floor and lobby space, public space and signage, which OP found would not modify the size or significantly alter the overall design of the 1333 Building.

Heurich House Foundation (the “Foundation”)

17. On August 1, 2019, the Commission received a request from the Foundation, the current owner and operator of the Heurich Mansion, to open the record to include testimony or comments from the Foundation. (Ex. 4.) On August 5, 2019, the Foundation’s request was denied since the Foundation was not a party to the Approved PUD.
18. On September 23, 2019, the Applicant submitted a letter of support from the Foundation. (Ex. 7.) The letter from the Foundation states that the Applicant and the Foundation have established an agreement that addresses, among other things, construction monitoring, construction hours and site management, and communications during construction. The agreement also includes a commitment by the Applicant to make a \$50,000 contribution to the Foundation to assist with efforts to preserve the Museum.

ANC 2B

19. On September 23, 2019, ANC 2B submitted a resolution in support of the Application (the “ANC Report”). (Ex. 8.) The ANC Report requested that the Application be processed as a Modification of Consequence provided the Applicant met the following conditions concerning the Foundation:
  - The Applicant executed a construction management agreement to the satisfaction of the Foundation; and
  - The Applicant committed to a \$50,000 contribution to the Foundation to assist with efforts to preserve the Museum in recognition of the additional habitable space in the penthouse, consistent with the Original Order.
20. Based upon the letter of support from the Foundation, the Applicant has agreed to satisfy both conditions contained in the ANC Resolution.

DCCA

21. On October 3, 2019, DCCA submitted a letter in support of the Application. (Ex. 9.)

**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.”

3. Subtitle Z § 703.4 includes “a proposed change to a condition in the final order” and “a redesign or relocation of architectural elements” as examples of Modifications of Consequence.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the Approved PUD, in this case ANC 2A and DCCA.
5. The Commission concludes that the Application qualifies as a Modification of Consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify the architectural elements and Condition Nos. 6 and 14 approved by the Original Order. Therefore, the Application can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission finds that the Application is consistent with the Approved PUD, as authorized by the Original Order, because it does not involve the change of any use, nor does it modify the size or significantly alter the overall design of the 1333 Building.

**“Great Weight” to the Recommendations of OP**

7. The Commission must give “great weight” to the recommendations of OP, pursuant to § 13(d) 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 (2001) and Subtitle Z § 405.8.)
8. The Commission notes OP’s lack of objection to the Application being considered as a Modification of Consequence and finds persuasive OP’s recommendation that the Commission approve the Application and therefore concurs in that judgment.

**“Great Weight” to the Written Report of the ANC**

9. 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 Y § 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).)
10. The Commission finds the ANC Report in support of the Application persuasive and concurs in that judgement. The Commission notes that the conditions contained in the ANC Report are not factors that are taken into consideration by the Commission when determining whether an application should be reviewed as a Modification of Consequence

or a Modification of Significance, and thus had no bearing on the Commission's determination to process this Application as a Modification of Consequence.

### 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 of Consequence to modify Condition Nos. 6 and 14 of Z.C. Order No. 101, and the plans approved thereby, as further processed pursuant to BZA Appeal Nos. 11875 and 11901 and as modified by Z.C. Order No. 101-A, with the conditions in Z.C. Order No. 101 remaining unchanged and in effect, except that Condition Nos. 6 and 14 are hereby revised to read (additions in **bold/underlined**; deletions in **~~bold/strikethrough~~**):


6. The ~~new~~ building at **1333 New Hampshire Avenue, NW** shall not exceed 130 feet in height. Any roof structures in the excess of that limit, as normally permitted by the Regulations, shall not exceed ~~17~~ **17'-2"** in height, **except that the elevator override may extend to a maximum of 20 feet, as shown in Exhibits 2G1, 2G2, and 5A in Z.C. Case No. 74-10A.**
  
14. The final design of the building shall be based primarily on the plans **dated July 23, 2019 at Exhibit 2G1-2G2 in Z.C. Case No. 74-10A to the degree they modify the plans approved by Z.C. Order No. 101** ~~submitted with this final application and~~ designated as follows:

Titled: Proposed Twelve Story Office Building  
1333 New Hampshire Avenue, N.W.  
Washington, D. C.  
Architect: Vlastimil Koubek, AIA  
Sheets dated May 15, 1974, A-1 through A-12

**VOTE (October 21, 2019): 5-0-0** (Robert E. Miller, Peter A. Shapiro, Anthony J. Hood, Peter G. May (by absentee ballot, and Michael G. Turnbull (by absentee ballot) to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 74-10A shall become final and effective upon publication in the *D.C. Register*; that is, on January 17, 2020.

  
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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.