

March 29, 2023

**Via IZIS**

Anthony Hood, Chairman  
District of Columbia Zoning Commission  
441 4th Street, NW, Suite 210-S  
Washington, DC 20001

Re: **Zoning Commission Order No. 14-19; Application of 300 M Street Development Group, LLC for Modification of Consequence of the Approved Planned Unit Development for the Property Located at 300 M Street NE (Square 772, Lot 24 / Lot 813) – Modification to Approval Conditions**

Dear Chairman Hood and Members of the Zoning Commission:

On behalf of 300 M Street Development Group, LLC (the “**Applicant**”), we hereby respectfully request a Modification of Consequence of the PUD approved in Z.C. Order No. 14-19 (the “**PUD Order**”)<sup>1</sup> for development of a mixed-use building (“**Project**”) at the property located at 300 M Street NE (Square 772, Record Lot 24, which is also designated as Lot 813) (the “**Property**”).<sup>2</sup> As described below, the Applicant proposes to modify two conditions of the PUD Order.

Specifically, Condition B.8 of the PUD Order, as approved, sets forth various monetary contributions and expenditures to support public improvements in the nearby area surrounding the Property as part of the approved PUD public benefits. The Applicant proposes to modify the conditions pertaining to two contributions that are no longer able to be completed as currently written: (i) Condition B.8.d requires a \$25,000 contribution to Playable Art DC, a District-run program, to implement at play and place-making initiative which cannot be executed because this program is no longer in operation; and (ii) Condition B.8.e requires a \$50,000 contribution to the Washington Metropolitan Area Transit Authority (“**WMATA**”), which WMATA has indicated it

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<sup>1</sup> The PUD Order was extended for a period of two (2) years by Z.C. Order No. 14-19A.

<sup>2</sup> When the PUD was approved, 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.

is unable to accept because the specific improvements or enhancements to the NoMa Metro station set forth in the PUD Condition are not currently proposed to be implemented by WMATA.

The Applicant has worked closely with Advisory Neighborhood Commission (“ANC”) 6C and the ANC Single Member District representative for the Property, ANC 6C07, to develop a new use for the above-stated PUD funds consistent with the original intent of the PUD Order, and the Applicant now proposes that the total \$75,000 sum under Conditions B.8.d and B.8.e be combined and contributed to the NoMa Business Improvement District (“**BID**”) to support public placemaking improvements near the Property.

As further discussed below, the proposed revision does not seek a change in use or a change to proffered public benefits and amenities, nor does it require any additional relief or flexibility from the Zoning Regulations.

In support of the Application, enclosed please find the following:

- Modification Application Form (Form 105).
- Appendix of prior Zoning Commission Orders for the PUD (Exhibit A).
- Authorization letter and Application Signature Page (Form 100) (Exhibit B).
- Precedent images for the proposed placemaking improvements to be implemented under the modified PUD Condition (Exhibit C).

The requisite filing fee for this request of \$520.00 made payable to the “D.C. Treasurer” is being delivered to the Office of Zoning concurrent with this filing, in accordance with 11 DCMR Subtitle Z § 1600.8.

The Applicant respectfully requests that this modification application be placed on the Zoning Commission’s consent calendar and reviewed in accordance with Subtitle Z § 703.

## **I. Background**

The Property is located in the NoMa neighborhood in Northeast, D.C. in Ward 6. In 2015, the Commission issued the PUD Order for approval of a consolidated PUD and related Zoning Map Amendment from the C-M-1 Zone District to the C-3-C Zone District for the development of the Project, a mixed-use building with ground-floor retail use and approximately 416 multifamily residential units (plus or minus 10%) on the Property.

In 2018, by Order No. 14-19A, the Commission granted a two-year time extension for the PUD Order. No modifications or other actions have been requested for the Property aside from the two-year time extension.

The PUD Order and the two-year extension were granted to the prior owner. The Applicant acquired the Property in June 2020 and thereupon immediately began work to obtain a building permit and commence construction of the Project that year. While construction was ongoing, the Applicant also pursued fulfillment of the various conditions of the PUD Order, including the monetary contributions and expenditures set forth under Condition B.8 of the Order. While the Applicant has been able to satisfy most of the PUD conditions, two contributions required under Condition B.8 are no longer able to be completed as currently written:

- **Condition B.8.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 . . . .”*
  - Playable Art DC was a District-run program operated in partnership between the Office of Planning (“OP”) and the DC Commission on the Arts and Humanities (“CAH”). The Applicant contacted OP and CAH to coordinate payment of the \$25,000 contribution under Condition B.8.d in Spring 2022 while Project construction was ongoing. However, the Applicant was informed at that time that the Playable Art program had been discontinued and thus the District was no longer able to accept the allotted funds for the art-based play space in the vicinity of the Property, necessitating an alternative, related use to be developed for the funds allocated under Condition B.8.d.
- **Condition B.8.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 . . . .”*
  - The Applicant also contacted WMATA in Spring 2022 to coordinate payment of the \$50,000 contribution set forth under Condition B.8.e. However, WMATA informed the development team that WMATA had no plans to make the NoMa Metrorail station improvements referenced in the Condition and thus was unable to accept the funds allotted under Condition B.8.e.<sup>3</sup>

Upon learning that the funding proposals set forth in Conditions B.8.d and B.8.e could no longer be effectuated as currently written, the Applicant worked extensively over several months with representatives from ANC 6C, the NoMa BID and WMATA to develop alternative proposals for each contribution that would allow the funds to be put to productive use in a manner consistent

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<sup>3</sup> While the funding proposal for additional Metro station turnstiles under Condition B.8.e was proffered by the Applicant’s predecessor-in-interest, the prior owner, who pursued the original PUD approvals, based on the Applicant’s discussions with the ANC this contribution was proffered at the specific request of the ANC.

with the original intent of the PUD Order and the relevant conditions. During the Applicant's outreach with the ANC, the ANC conveyed its strong preference for specific placemaking improvements which would be located in the immediate area surrounding the Property and which represented a high priority to the ANC. Based on the ANC's beneficial feedback and direction, the Applicant readily worked with the ANC and representatives from the NoMa BID directly to further revise the proposal for the PUD funds in order to better realize the ANC's stated priorities while remaining consistent with the original intent of the PUD Order conditions, resulting in the proposal set forth in this Application, as discussed in detail below.

## II. Requested Modification

The Applicant proposes to modify Conditions B.8.d and B.8.e of the PUD Order, as referenced above, to reallocate the respective \$25,000 and \$50,000 contributions set forth under those conditions. Specifically, as developed in close coordination with ANC 6C, the Applicant proposes to combine the subject funds in order to contribute \$75,000 to the NoMa BID to support placemaking improvements near the Property consisting of: ground-plane artistic elements; wall art that celebrates the NoMa neighborhood; and/or bicycle play infrastructure, as shown in the precedent images attached as Exhibit C. The final section and implementation of the improvements are to be coordinated between the NoMa BID and ANC 6C, which will also work to determine the final location for the improvements in and around the 200 and 300 blocks of M Street, NE and/or the 100-300 blocks of L Street, NE, including the public space at grade and the elevated railroad tracks and Metropolitan Branch Trail, subject to any necessary approval from the District Department of Transportation.

In order to effectuate the above-described modification to the PUD Order, the Applicant requests that the relevant conditions of Z.C. Order No. 14-19, Conditions B.8.d and B.8.e, be removed and replaced in their entirety, and subsequent conditions renumbered, as follows (proposed edits shown in **bold underline** and ~~strikethrough~~):

8. . . . The Applicant shall: . . . .

- ~~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, 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.**

### **III. Satisfaction of Standards of Subtitle Z § 703**

Under Subtitle Z § 703.4 of the Zoning Regulations, examples of Modifications of Consequence “[i]nclude, 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.” (Emphasis added.) As the Commission has previously stated, the standard for whether a proposed modification qualifies as a Modification of Consequence is “flexible, with the principal distinction between modifications of significance and consequence being whether the Commission believes it would be helpful to have a hearing.” Z.C. Order No. 04-13A(1) (2017) at Conclusion of Law No. 1.

The modification proposed in this Application relates to proposed changes to conditions in the PUD Order and, specifically, to revise two conditions in order to redirect monetary contributions set forth in the PUD Order which can no longer be executed as currently written because the fund recipients — the District and WMATA, respectively — have both indicated that they cannot accept such funds for the specific implementation set forth in the conditions. Accordingly, the proposed modification will allow the affected Order Conditions to be fulfilled and the approved public benefits to be fully effectuated consistent with the original intent of the PUD Order.<sup>4</sup>

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<sup>4</sup> While one example of a Modification of Significance stated in Subtitle Z § 703.6 is a “change to a proffered public benefits and amenities,” as discussed in Z.C. Order No. 04-13A(1) and noted above, the Commission has previously applied the modification standards set forth in Subtitle Z § 703 flexibly and, in doing so, has considered primarily whether it would be helpful to have a hearing. Where, as here, the request is straightforward and supported by all the parties to the original application, the Commission has reviewed such applications as a Modification of Consequence even if the request involves revisions to an Order Condition governing one or more approved public benefits, as requested here. *See e.g.* Z.C. Order No. 11-08C (2018) (approving as a Modification of Consequence revisions to two PUD Order Conditions governing public benefit improvements and contributions for the Adams Morgan Festival Center and Reed-Cooke Neighborhood Association, respectively); *see also* Z.C. Order No. 06-11V/06-12V (2021) (approving as a Modification of Consequence revisions to a PUD Order Condition governing a public benefit to the Foggy Bottom Association for improvements to the 26<sup>th</sup> Street Park). The Applicant also notes that processing the instant Application as a Modification of Consequence would be consistent with the current pending amendments to the Commission’s Rules of Practice and Procedure proposed in Z.C. Case No. 22-25, which proposes to clarify the

Furthermore, the proposed modification has been developed in close coordination with ANC 6C, which is the only other party to the original PUD application. In addition to working extensively with the ANC Single Member District Representative for the Property, ANC 6C07, the Applicant also presented to the ANC's Planning, Zoning and Economic Development ("PZE") Committee on January 4, 2023 and March 1, 2023, and to the full ANC at its regular monthly public meeting on March 8, 2023. The ANC's PZE Committee voted to support the proposed modification to the PUD Order, and the full ANC stated its support as well at the March 2023 meeting. The Applicant is sending this Application to ANC 6C concurrently with this filing and anticipates the ANC will submit a formal letter in support prior to the public meeting.

#### **IV. Conclusion**

The proposed modification is entirely consistent with the Zoning Commission's previous approval of the original PUD application and Project and, as discussed above, comports with the definition of a Modification of Consequence rather than a Modification of Significance. Accordingly, the Applicant respectfully requests that the consideration of this proposed Modification of Consequence be scheduled for the Commission's consent calendar pursuant to Subtitle Z § 703.

If you have any questions or comments regarding the proposed modification, please contact the undersigned. Thank you for your attention to this application.

Respectfully Submitted,

s/ Jeff C. Utz

Jeff C. Utz

/s/ Lawrence Ferris

Lawrence Ferris

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standards governing modifications by replacing the provision for Modifications of Consequence concept with a "modification without a hearing," which would include any "modification in which impact may be understood without witness testimony." *See* OP Setdown Report at Exhibit 2 of Z.C. Case No. 22-25. Here, the modification being requested is straightforward and readily understood based on written submissions without the need for any witness testimony, in addition to being fully supported by the only other party to the original application, ANC 6C.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document and attachments were sent to the following by email on March 29, 2023:

Jennifer Steingasser  
Joel Lawson  
Stephen Cochran  
Office of Planning  
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/s/ Lawrence Ferris  
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