

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 12-14D**

**Z.C. Case No. 12-14D**

**3<sup>rd</sup> and M, LLC, 3<sup>rd</sup> and K, LLC, and Park Inn Associates, LP**

**(Modification of Consequence of Approved PUD @**

**Square 542, Lots 816, 817, 821, 883, & 2124-2251)**

**October 13, 2022**

Pursuant to notice, at its October 13, 2022 public meeting, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of 3<sup>rd</sup> and M, LLC, 3<sup>rd</sup> and K, LLC, and Park Inn Associates, LP (“Applicant”) for a Modification of Consequence of Orders No. 12-14/12-14A<sup>1</sup> and 12-14C (the “Orders”) to make changes to the approved plans. The Orders initially approved a consolidated Planned Unit Development (“PUD”) and related Zoning Map amendment to allow the construction of two new residential buildings<sup>2</sup>, underground parking, and associated site improvements (the “Project”) for Lots 816, 817, 821, 883, and 2124-2251 (the “Property”). The Orders approved the Project in two phases. Phase one was a new residential building at 301 M Street, S.W. (the “South Building”), which has been constructed and received its Certificate of Occupancy in 2018. Phase two is to be a new residential building at 300 K Street, S.W. (the “North Building”). The requested changes to the approved plans include:

- Updating the central courtyard between the two existing I.M. Pei buildings to add a canopy, screen walls, and landscape improvements; to remove the covered passage; and to combine the two separate courtyards into a single courtyard;
- Removing the connection between the existing I.M. Pei building and the North Building;
- Removing the paseo feature at the western end of the North Building;
- Increasing bio-retention to comply with stormwater regulations;
- Decreasing total gross floor area (GFA) by approximately 3,000 sf;
- Increasing the unit count from 175 to 187;
- Finalizing the number of parking spaces in the North Building at 90-92 (within 86-111 range approved in Z.C. Order 12-14C);
- Updating the penthouse/roof level to relocate the gym to the ground floor; add a sun deck and lounge; and increase the penthouse height; and
- Refining the building facades.

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

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<sup>1</sup> Z.C. Case No. 12-14 applied to the North Building and Z.C. Case No. 12-14A to the South Building. The Commission heard the two cases together with a single shared record and order.

<sup>2</sup> The two buildings are located on either side of two existing residential buildings designed by I.M. Pei.

Columbia Municipal 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. In Z.C. Order No. 12-14/12-14A (the “original Order”), effective March 14, 2014, the Commission approved a consolidated PUD to allow construction of two new residential buildings and a related map amendment to the CR zone (now the MU-10 zone) for the Property.
2. In Z.C. Order No. 12-14B, effective January 31, 2020, the Commission approved a two-year time extension to extend the deadline to file a building permit to construct the North Building to April 27, 2022.<sup>3</sup>
3. In Z.C. Order No. 12-14C, effective July 3, 2020, the Commission approved a modification of consequence that permitted the Applicant to reduce the number of parking spaces in the North Building to within a range of 86-111 spaces.

### **Parties and Notice**

4. In addition to the Applicant, the parties to the original Order were Advisory Neighborhood Commission (“ANC”) 6D, Carrollsburg A Condominium (“CAC”), and Waterfront Tower Condominium (“WTC”).
5. The Applicant served the Application on ANC 6D, WTC, and CAC<sup>4</sup>, the parties to the original Order, OP, and DDOT on August 24, 2022. (Exhibit [“Ex.”] 3, p. 5.)

### **The Application**

6. On August 24, 2022, the Applicant filed the Application requesting to modify the approved plans of the Orders to redesign the courtyard open space, remove the building connector, increase the unit count, redesign the penthouse/roof level, and update the building façade design. The Applicant described the Application as proposed modifications of architectural elements, refinement to unit count and related square footage, and updates of landscaping elements that fall within the definition of a modification of consequence. (Ex. 3.)
7. The Application explained that the proposed changes to the central courtyard open space address specific requests from WTC, and the removal of the building connector is supported by the Historic Preservation Office. The Application noted that the increased unit count results in an increase to the square footage of Inclusionary Zoning (IZ) units to

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<sup>3</sup> Subsequently, Z.C. Order 12-14(1), effective May 6, 2022, granted an administrative Covid-19 one-year time extension to extend the deadline to file a building permit to construct the North Building to April 27, 2023.

<sup>4</sup> The Applicant states that it has not received a response from CAC regarding the Application, and CAC did not participate in the previous modification of consequence, Z.C. Case No. 12-14C. (Ex. 3.)

12% of gross floor area (GFA) at 60% median family income (MFI). The Application also explained that the original Order approval did not include an IZ public benefit, it simply required compliance with the requirement of 8% GFA at 80% MFI. (Ex. 3.)

8. The Application stated that the proposed changes are not inconsistent with the Comprehensive Plan, specifically the additional affordable housing, the decreased parking count, the enhanced green space, and the proposed addition of solar panels meet the Plan's stated goals. Moreover, the changes further racial equity goals as the increase of IZ square footage from 8% to 12% of GFA and the decrease in the MFI from 80% to 60% will enhance the supply of affordable housing and bring new residents to the area. (Ex. 3.)
9. On September 12, 2022, the Applicant filed a letter explaining that the architectural drawings that were filed on August 24, 2022, incorrectly depicted and overstated the height of the penthouse of the proposed North Building. (Ex. 7.) The Applicant filed replacement pages 12, 15, and 16 for the architectural drawings at Ex. 3C1 of the case record to correctly reflect the penthouse. (Ex. 7A.)

### **Responses to the Application**

10. OP submitted a report dated September 19, 2022, recommending approval of the Application subject to the following condition, to which the Applicant agreed:

The building must include no less than 22 two-bedroom units, including the five two-bedroom units dedicated to the inclusionary zoning program.

In addition, OP's report stated that it concurs with the Applicant and concludes that the proposed changes are a modification of consequence. OP observed that the proposed changes to the approved plans are in response to market changes and recommendations from the community, they would not impact the use of the Project and would not require additional zoning relief or flexibility, and they would not negatively impact the benefits and amenities in the original Order. (Ex. 8, 10.)

11. On August 29, 2022, the Waterfront Tower Condominium Board<sup>5</sup> submitted two letters of conditional support of the Application and expressed concerns about the specifications for the proposed changes to the courtyard and landscaping, including material choices, dimensions of walks and other hardscape features, plant materials, and site furnishings. The Board requested that the Applicant agree to continued consultation regarding the overall concept plan and design for the courtyard and landscaping. (Ex. 4, 5.)
12. By report dated July 18, 2022, and pursuant to an unanimous vote taken at a regularly-scheduled and duly-noticed public meeting on the same date, ANC 6D supported the Application, subject to the following conditions requested by WTC, to which the Applicant agreed:

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<sup>5</sup> Waterfront Tower Condominium Board is the Board of WTC.

The Applicant agrees to consult with WTC on the proposed renovation of the courtyard between the two I.M. Pei buildings. The specifications on scale of design features (e.g., walkways), lighting and trees will be provided to WTC as agreed by the Applicant in order to support the mid-century design intentions; the new dog park will include a proper cleaning and drainage plan; and the pro-rata share of cost for upkeep of the courtyard will be maintained. (Ex. 9, 10.)

### **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 redesign or relocation of architectural elements and open spaces from the final design approved by the Commission” as an example of a Modification of Consequence.
4. 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 redesign of architectural elements and open spaces from the final design approved by the Commission in the original Order; therefore, the modification can be granted without a public hearing.
5. 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, in this case ANC 6D, WTC, and CAC.
6. At its October 13, 2022 public meeting, the Commission deliberated on the Application, after previously establishing a timeframe for parties to respond to the Application pursuant to the requirement of Subtitle Z § 703.17(c)(2). As noted, both ANC 6D and WTC filed responses to the Application; CAC did not file a response.
7. The Commission finds that the Application is consistent with the intent and goals of the PUD as approved by the original Order because the proposed modifications to the approved plans do not require additional zoning relief or flexibility and would not negatively impact the benefits and amenities of the original Order.

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

8. 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).)

9. 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**

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) (citation omitted).)
11. The Commission finds ANC 6D’s recommendation to approve the Application persuasive, concurs in that judgment, and notes that the Applicant agreed to ANC 6D’s proposed conditions to ensure continued consultation and coordination between WTC and the Applicant during the redesign of the courtyard and landscaping. The ANC report does not list any issues or concerns for the Commission to give great weight to.

**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 the approved plans of Z.C. Orders No. 12-14/12-14A and 12-14C to:

- Update the central courtyard between the two existing I.M. Pei buildings to add a canopy, screen walls, and landscape improvements; to remove the covered passage; and to combine the two separate courtyards into a single courtyard;
- Remove the connection between the existing I.M. Pei building and the North Building;
- Remove the paseo feature at the western end of the North Building;
- Increase bio-retention to comply with stormwater regulations;
- Decrease total gross floor area (GFA) by approximately 3,000 sf;
- Increase the unit count from 175 to 187;
- Finalize the number of parking spaces in the North Building at 90-92 (within 86-111 range approved in Z.C. Order 12-14C);
- Update the penthouse/roof level to relocate the gym to the ground floor; add a sun deck and lounge; and increase the penthouse height; and
- Refine the building façades.

Z.C. Orders No. 12-14/12-14A and 12-14C are modified to revise Condition No. A.1 to read as follows (deletions shown in **bold** and ~~striketrough~~ text; additions in **underlined/bolded** text); this modification approval is also subject to the following conditions:

The building must include no less than 22 two-bedroom units, including the five two-bedroom units dedicated to the inclusionary zoning program.

The Applicant agrees to consult with WTC on the proposed renovation of the courtyard between the two I.M. Pei buildings. The specifications on scale of design features (e.g., walkways), lighting and trees will be provided to WTC as agreed by the Applicant in order to support the mid-century design intentions; the new dog park will include a proper cleaning and drainage plan; and the pro-rata share of cost for upkeep of the courtyard will be maintained.


Condition A.1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 41, 50, 59B, 63A, and 63B in Z.C. Case No. 12-14/12-14A, as modified by the plans dated September 17, 2019 (Exhibit 2B in Z.C. Case No. 12-14C) only to the extent of reducing the parking spaces for the North Building to a range of 86-111(pp. 2, 4-5, and 11), **as modified by the plans dated August 16, 2022 and August 12, 2022 (Exhibit 3C1, 3C2, and 3C3 in Z.C. Case No. 12-14D), as further modified by replacement pages dated August 16, 2022 for Exhibit 3C1 (Exhibit 7A in Z.C. Case No. 12-14D),** and as further modified by the guidelines, conditions, and standards of this Order.

All other conditions of Z.C. Orders 12-14/12-14A and 12-14C remain unchanged and in effect.

**VOTE (October 13, 2022):** 4-0-1 (Robert E. Miller, Anthony J. Hood, Peter G. May, and Joseph S. Imamura to **APPROVE**; 3<sup>rd</sup> Mayoral appointee seat vacant, not voting).

In accordance with the provisions of Subtitle Z, Section 604.9, this Order No. 12-14D shall become final and effective upon publication in the *D.C. Register*; that is, on December 9, 2022.

  
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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.