

# Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564  
Holland & Knight LLP | [www.hklaw.com](http://www.hklaw.com)

Christine Shiker  
202.457.7167  
christine.shiker@hklaw.com

June 13, 2018

## **VIA IZIS AND HAND DELIVERY**

Zoning Commission for the  
District of Columbia  
441 4th Street, N.W., Suite 210S  
Washington, D.C. 20001

**Re: Application for a Minor Modification to an Approved PUD**  
**Zoning Commission Case Nos. 62-19/62-19A**  
**Watergate Office Building at 600 New Hampshire Avenue, NW**

Dear Members of the Commission:

On behalf of WASHREIT WATERGATE 600 OP LP (the “Applicant”), the owner of property located at Lot 811 (part of Record Lot 19) in Square 8 (the “Site”), we hereby submit an application for a Minor Modification to the above-referenced Planned Unit Development (“PUD”) approved pursuant to Zoning Commission Order Nos. 62-19 and 62-19A. The Site is zoned MU-2.

This modification request is made pursuant to the Zoning Commission's authority established in Subtitle Z § 703 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”), which allows the Zoning Commission to approve Minor Modifications without a public hearing. As described below, the application is properly reviewed as a Minor Modification pursuant to Subtitle Z § 703 and Subtitle C § 1504.3 because it seeks to add penthouse habitable space to a building previously approved by the Zoning Commission as part of a PUD.

Attached hereto as Exhibit A is Zoning Commission Form 105 - Application for a Minor Modification and a letter of authorization from the Applicant. Also included is a check in the amount of \$520.00 for the filing fee.

### **A. Previously Approved PUDs**

Pursuant to Zoning Commission Order No. 62-19, dated July 17, 1962, the Zoning Commission approved the Watergate PUD as a mixed-use project to be developed in four stages with 1,300 residential units, 300 hotel rooms, 185,000 square feet of office space, 94,000 square feet of retail use, below grade parking, and open space (the “Watergate Project”).

Pursuant to BZA Appeal Nos. 7234 (approved in 1963), 7903 (approved in 1964), 8117 (approved in 1965), and 9303 (approved in 1968), the Board approved further processing for Stages 1 through 4, respectively, of development of the Watergate Project.

Pursuant to Z.C. Case No. 68-58, dated December 18, 1968, the Zoning Commission approved modifications to “Building 1” within Stage IV of the Watergate Project, which is the office building located at 600 New Hampshire Avenue, NW (the “Office Building”), to provide for the combination of residential and office uses, distributed vertically, with 325 residential units and 260,600 square feet of office use. The type of office use permitted in Z.C. Case No. 68-58 was “restricted to those types of office uses permitted in the SP District.” *See* Finding of Fact No. 1. Pursuant to BZA Appeal No. 9919, dated January 30, 1969, and effective on February 3, 1969, the BZA approved further processing of Building 1 to be constructed in three substages and also approved a reduction in the number of residential units in Building 1 from 325 to no less than 287. Pursuant to BZA Appeal No. 9919, dated March 24, 1970, effective on May 11, 1970, the BZA approved a further reduction in residential units in Building 1 from 287 to 260 and a reduction in the number of parking spaces from 580 to 551. Finally, pursuant to Z.C. Order No. 100 (Z.C. Case No. 72-23), dated November 15, 1974, the Zoning Commission approved an amendment to Z.C. Case No. 68-58 to expand the types of office uses permitted in the Office Building to include a variety of office uses not otherwise permitted in the SP District.

Pursuant to Z.C. Order No. 125 (Z.C. Case No. 75-3), dated February 12, 1976, the Zoning Commission approved amendments to the types of office uses permitted within the Stage II Office Building.

Pursuant to Z.C. Order No. 631 (Z.C. Case No. 89-6M/62-19), dated September 11, 1989, and effective on November 3, 1989, the Zoning Commission approved a modification to the hotel portion of the Watergate Project to permit a 2,000 square foot expansion to the hotel’s health club. Pursuant to Z.C. Order No. 03-16, dated June 14, 2004, and effective on August 6, 2004, the Zoning Commission approved a conversion of the hotel into an apartment house use. The hotel was closed in 2007 pending redevelopment, but the conversion never occurred and the Commission’s approval in Z.C. Order No. 03-16 expired. Pursuant to Z.C. Order No. 631A (Z.C. Case No. 62-19A), dated January 9, 2012, and effective on June 22, 2012, the Zoning Commission approved a minor modification to reopen the hotel and increase the number of hotel rooms to 355 rooms.

Copies of the above-referenced orders are attached as Exhibit B.

**B. Office Building – 600 New Hampshire Avenue, NW**

The Office Building located at 600 New Hampshire Avenue, NW was originally constructed in the 1960s. The Applicant acquired the Office Building in April, 2017, and has been renovating and upgrading the space to ensure its continued position as a Class A office building in support of the overall Watergate development. Improvements include renovating the lobby, modernizing the elevators, completing exterior coating repairs, and upgrading the interior tenant amenity spaces. Through this application, the Applicant seeks to incorporate penthouse habitable space on the roof

of the Office Building to provide opportunities for tenants and their guests to have additional amenity space in the building while enjoying views towards the Kennedy Center and the Potomac River.

**C. Minor Modification Requested**

As shown on the PUD Minor Modification Plans hereto as Exhibit C (the “Minor Modification Plans”), the Applicant proposes to construct approximately 1,700 square feet of penthouse habitable space as an expansion of the existing roof structure with access from the existing elevator bank. The space has been designed to integrate with the original design of the Watergate Project and blend seamlessly with the historic landmark by incorporating simple materials and complimentary curves and ellipses. The interior space will contain an open room designed to support the existing roof deck which can be used by the tenants of the building for different purposes, including, among others, a conference room set up, presentation set up, or event set up. The construction will include upgrading the structure to support current code design loads, provide for accessibility and add restrooms to support the space.

The penthouse heights and setbacks comply with the requirements set forth in Chapter 15 of Subtitle C. Specifically, the penthouse will have a maximum height of 12 feet, 4 inches, which is within the penthouse height permitted in the MU-2 zone. Subtitle G § 303.2. The penthouse will be set back in excess of 1:1 from the edge of the roof upon which it sits in accordance with Subtitle C § 1502.1. In addition, a roof deck and guardrail are proposed to be added in the area adjacent to the penthouse habitable space, both of which will be set back in excess of the 1:1 requirement. There is no proposed change to the existing screenwalls, the independent stair tower or the existing guard rail, all of which are contributing aspect to the historic landmark. However, a small portion of low-rise screenwall will be removed and the equipment will be relocated behind existing screenwalls. This section of screenwall was constructed after the original construction of the Office Building and does not contribute to the historic landmark. There is no change to the parking or loading previously approved and provided for the PUD.

As a result of the proposed habitable space, the Applicant will contribute to the production of affordable housing as required by the penthouse regulations. The Applicant will make a contribution to the Housing Production Trust Fund in accordance with the formula contained in Subtitle C §§ 1505.13 through 1505.16, which will be equal to one-half of the assessed value of the proposed penthouse habitable space, which is approximately \$165,000 based on the current assessed value. The final amount of the total contribution will be determined no earlier than 30 days prior to the date of the building permit application to construct the penthouse habitable space. No less than one-half of the required total financial contribution will be made prior to the issuance of a building permit for construction of the penthouse habitable space, and the balance will be made prior to the issuance of a certificate of occupancy for the building’s penthouse habitable space.

Pursuant to Subtitle C § 1504.3, a request to add penthouse habitable space to a building approved by the Zoning Commission as a PUD prior to January 8, 2016, may be filed as a minor modification for placement on the Zoning Commission’s consent calendar, pursuant to Subtitle Z § 703, provided (a) the item shall not be placed on a consent calendar for a period of 30 days minimum

following the filing of the application; and (b) the Office of Planning shall submit a report with a recommendation a minimum of seven days in advance of the meeting. *See* Subtitle C § 1504.3. An application made pursuant to Subtitle C § 1504.3 shall include the following:

- a. A fully dimensioned copy of the approved and proposed roof plan and elevations as necessary to show the changes;
- b. A written comparison of the proposal to the Zoning Regulations; and
- c. Verification that the affected Advisory Neighborhood Commission has been notified of the request.

This application complies with the requirements of Subtitle C § 1504.3(a) through (c). As shown on the elevations, sections, and plans of the Minor Modification Plans, the Applicant has provided fully dimensioned plans and elevations showing the approved and proposed penthouses. A written comparison of the proposal is provided herein. Finally, as shown on the Certificate of Service attached at the end of this statement, the Applicant has notified the affected ANC of the request.

**D. Jurisdiction of the Zoning Commission and Compliance with Standards**

Subtitle Z § 703 authorizes the Zoning Commission to approve Minor Modifications to approved final orders and plans through a “consent calendar” procedure without a public hearing. Pursuant to Subtitle Z § 703.2, “minor modifications” are those modifications that do not change the material facts upon which the Commission based its original approval. Furthermore, Subtitle C § 1504.3 provides that a request to add penthouse habitable space to a building approved by the Zoning Commission as a PUD may be filed as a Minor Modification for placement on the Zoning Commission’s consent calendar, provided that (a) the item shall not be placed on a consent calendar for a period of 30 days minimum following the filing of the application; and (b) the Office of Planning shall submit a report with recommendations a minimum of seven days in advance of the meeting.

The modifications requested herein do not change the material facts upon which the Commission based its original approval, and the proposed modification is to add penthouse habitable space to a building previously approved as a PUD. Accordingly, the request falls within the scope of a Minor Modification made pursuant to Subtitle Z § 703 and Subtitle C § 1504.3.

**E. Jurisdiction of Other Agencies**

The Office Building is a designated historic landmark and is located within the area governed by the Shipstead-Luce Act. Thus, the penthouse renovation is subject to design review. The Applicant has worked closely with staff from the Commission of Fine Arts (“CFA”) and the Historic Preservation Office. On May 17, 2018, CFA approved the proposal on its Shipstead Luce Appendix (i.e., its consent calendar). A copy of the letter from CFA is attached as Exhibit D. The Applicant has been informed that Historic Preservation review will follow CFA’s approval.

**F. Service on Affected Advisory Neighborhood Commissions (“ANCs”) and Parties to the Original Proceeding**

Pursuant to Subtitle C § 1504.4(c) and Subtitle Z § 703.13, the Applicant is required to formally serve a copy of the subject application on all parties to the original proceeding at the same time that the request is filed with the Office of Zoning. In 1962, when the original PUD was approved, neither the Zoning Commission (“Commission”) nor the Board of Zoning Adjustment (“Board”) had rules creating party status. Standing as a party came in only after 1972, when the Court of Appeals determined that the D.C. Administrative Procedure Act applied to the Commission and the Board. Consequently, a copy of this request for consent calendar modification has been sent to the Advisory Neighborhood Commission (“ANC”) 2A as well as to the owners of the buildings within the Watergate Project, including (i) the Boards of Directors of Watergate East, Inc., Watergate West, Inc., and Watergate South, Inc., all of which are the cooperative associations which own the three apartment buildings in the project, (ii) Watergate Hotel LLC, the owner of the hotel building; (iii) Watergate Office Fee Owner LLC, owner of an office building; and (iv) Watergate Partners, LLC, owner of the retail leasehold interest.

Prior to submitting this application, the Applicant began working with ANC 2A as to the proposal. The Applicant met with the single member district representative of ANC 2A in April, 2018. The Applicant then presented the proposal to ANC 2A at its regularly scheduled monthly meeting on May 16, 2018. ANC 2A voted unanimously to support the application, subject to the Applicant’s agreement on certain commitments relating to the operation of the outdoor roof deck. These commitments include the following: (1) The penthouse habitable space will be an accessory space to the office building for use by tenants and/or users that are affiliated with the tenants in the building; (2) No amplified music will be played on the roof deck; (3) The roof deck will be operated in full compliance with the noise ordinances of Title 20 of the District of Columbia Municipal Regulations; and (4) The roof deck will be closed to users after 12:00 midnight on Friday and Saturday nights and after 11:00 pm on all other nights. These points of agreement do not relate to occupancy of the penthouse habitable space, which is the subject of this application, but rather to the use of the roof deck. Because the space will not be subject to review and approval through ABRA (i.e., it is not a restaurant, bar or hotel), these points of agreements cannot be incorporated into an ABRA approval or Stipulated Agreement, which is typically how such agreements are documented. Accordingly, the Applicant and the ANC have agreed to enter into a separate agreement memorializing these terms and are currently working through that process.

**G. Conclusion**

The Applicant respectfully requests approval of this Minor Modification to add penthouse habitable space to the Office Building. The Applicant requests that this application be placed on the Commission’s public meeting agenda for July 30, 2018, which is a minimum of 30 days following the filing of the application. As required by Subtitle Z § 703.2, the Minor Modification does not change the material facts upon which the Commission based its original approval of the application. Accordingly, approval of the Minor Modification is appropriate.

Zoning Commission for the  
District of Columbia  
June 13, 2018  
Page 6

Respectfully submitted,

HOLLAND & KNIGHT LLP



---

Christine M. Shiker

Attachments

cc: *Certificate of Service*  
Jennifer Steingasser, D.C. Office of Planning (w/attachments via Hand)  
Joel Lawson, D.C. Office of Planning (w/attachments via Hand & Email)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this request for Minor Modification to a PUD (Zoning Commission Order Nos. 62-19 and 62-19A) was served the following in accordance with Subtitle C § 1504.4(c) and Subtitle Z § 703.13 on June 13, 2018.

Advisory Neighborhood Commission 2A  
2020 Pennsylvania Avenue NW #293  
Washington, DC 20006  
Via Hand Delivery

William Kenney Smith, MD  
Single Member District Representation and Chairperson  
2512 Virginia Avenue, NW  
Box 58280  
Washington, DC 20037  
Via Hand Delivery

Board of Directors of Watergate East, Inc.  
2500 Virginia Avenue, NW  
Washington, DC 20037  
Via US Mail

Board of Directors of Watergate West, Inc.  
2500 Virginia Avenue, NW  
Washington, DC 20037  
Via US Mail

Board of Directors of Watergate South, Inc.  
700 New Hampshire Avenue, NW  
Washington, DC 20037  
Via US Mail

Watergate Hotel LLC  
250 W 57<sup>th</sup> Street, Suite 1818  
New York, NY 10107  
Via US Mail

Watergate Office Fee Owner LLC  
140 E 42<sup>nd</sup> Street, Floor 34  
New York, NE 10017  
Via US Mail

Watergate Partners, LLC  
6858 Old Dominion Drive, Suite 102  
McLean VA 22101  
Via US Mail



---

Christine M. Shiker, Esq.