

June 26, 2018

**VIA IZIS AND HAND DELIVERY**

Anthony J. Hood, Chairman  
Zoning Commission for the District of Columbia  
441 Fourth Street, NW, Suite 200S  
Washington, DC 20001

**Re: Z.C. Case No. 15-32 – Consolidated Planned Unit Development and Zoning Map amendment (collectively, the “Approved PUD”) for the Property located at 1126 9<sup>th</sup> Street, NW (Square 369, Lot 880) (the “Property”) – Application for a Modification of Consequence**

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Dear Chairman Hood and Commissioners:

The applicant in the above-referenced proceeding, 1126 9<sup>th</sup> St. NW, LLC (the “**Applicant**”) hereby seeks review and approval pursuant to Subtitle Z, Section 703 of a Modification of Consequence of the Approved PUD. The scope of this modification entails reducing the height and density and eliminating one area of zoning flexibility (collectively and as more fully described below, the “**Revised Project**”) of the mixed-use, multiple dwelling residential building approved (the “**Original Project**”) authorized under the Approved PUD. Notably, although the Revised Project is smaller than the Original Project, the Applicant does not seek to reduce the number of affordable housing units, does not propose amending any other public benefits or amenities, and does not seek additional zoning flexibility or any change of use.

Attached are an application form (**Exhibit A**), the order for the Approved PUD (**Exhibit B**) (the “**Order**”), and plans depicting the Revised Project (**Exhibit C**) (the “**Revised Plans**”). A check in the amount of \$520 made payable to the “DC Treasurer” is enclosed herewith.

**Background**

The Original Project is a 33-unit, approximately 40,300-square foot, mixed-use, multiple dwelling residential building with ground floor commercial uses located at the corner of 9<sup>th</sup> Street, NW and M Street, NW immediately across from the Washington Convention Center. An existing two-story building (the “**Existing Building**”) that is historically contributing to the Shaw Historic District occupies a portion of the Property along 9<sup>th</sup> Street, NW. The balance of the Property is

currently vacant. The Existing Building will remain and be rehabilitated and incorporated into the Revised Project, consistent with the plan for such building under the Approved PUD.

The Original Project has a maximum height of 100 feet and an overall floor area ratio (“**FAR**”) of 5.5. The Original Project included approximately 3,700 square feet of ground floor commercial uses, with all of the upper floors being devoted to residential use. The Property is split between the DD/C-2-C and DD/C-2-A zone districts, and the Approved PUD included a Zoning Map amendment to rezone a portion of the Property from the DD/C-2-A zone district to the DD/C-2-C zone district.<sup>1</sup> A small portion of the Property occupied by the Existing Building remained within the DD/C-2-A zone district even after the Zoning Map amendment. *See* page 3 of the Revised Plans. The Original Project included two parking spaces, requiring zoning flexibility from the parking requirements with respect to parking space dimensions and with respect to the number of spaces. The Original Project also required zoning flexibility from the court, M Street, NW building height and setback requirements, and penthouse setback requirements. Although the Property is within the portion of the District that is exempt from inclusionary zoning under the Zoning Regulations, as a public benefit, the Approved PUD includes two affordable units (one at 50% AMI and the other at 80% AMI). Other public benefits in the Approved PUD include LEED Gold design and in-kind contributions to various community groups. The Approved PUD also includes a robust transportation mitigation package.

The Zoning Commission took final action approving the Approved PUD on September 26, 2016 and issued Z.C. Order No. 15-32 approving the Approved PUD on November 25, 2016.

### **The Revised Project**

Since the Commission’s approval of the Original Project, external factors have made the Original Project impractical, requiring the requested modifications. Most significantly, construction costs have increased dramatically in the past twelve (12) to fifteen (15) months.<sup>2</sup> Proposed tariffs have already had a dramatic impact, causing a previously unforeseen ten percent (10%) spike in the price of steel.<sup>3</sup> Therefore, the proposed concrete and steel building was no longer financially viable to construct. The Original Project included a 100-foot tall tower element that, on account of the Property’s unique site constraints and geometry, had interior layouts that were inefficient relative to typical residential buildings. Removing the tower in light of construction costs and its poor inefficiency is the major change driving this modification request.

As a result of these changing conditions in construction costs, the Revised Project includes the following revisions (*see* page 4 of the Revised Plans):

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<sup>1</sup> The Original Project and the Zoning Map amendment approved therewith are together vested under the 1958 Zoning Regulations.

<sup>2</sup> *See* Bendix Anderson, *Construction Costs Rise for Apartment Projects*, NATIONAL REAL ESTATE INVESTOR (Nov. 14, 2017) <http://www.nreionline.com/multifamily/construction-costs-rise-apartment-projects>

<sup>3</sup> *See* Mary Diduch, *Tariffs Already Putting Pressure on Commercial Construction Pricing*, NATIONAL REAL ESTATE INVESTOR (Mar. 20, 2018) <http://www.nreionline.com/development/tariffs-already-putting-pressure-commercial-construction-pricing>

- A overall reduction from 100 feet at the highest point to 74.33 feet;
- An overall reduction in GFA from approximately 40,290 square feet (5.5 FAR) to approximately 33,697 for a new FAR of 4.4;
- An enlargement of the light wells (i.e., closed courts, *see* Revised Plans at page 12);
- Reconfiguration of rooftop mechanicals and rooftop green areas (*see id.*);
- The reconfiguration of internal demising walls of individual units (*id.* at pages 20-23);
- The partial reallocation of density from the Original Project's 100-foot tower to the rear four-story portion of the building, by adding residential uses in that location and converting the four-story portion to five stories (*see id.* at page 32);
- Conforming changes to the exterior architecture to account for the reduction in height and reallocation of density (*see id.* at pages 29-31 and 32-40b); and
- The removal of penthouse setback relief previously requested (*see id.* at page 26a).

These changes are in response to the above-described economic conditions, which necessitate removal of the tower. The Revised Project is shorter and smaller because of the recent and significant run up in construction costs. The Revised Project's reallocation of density to the rear of the building improves interior efficiencies. Other changes, such as to the size of the light wells, rooftop green areas, and exterior architecture, are either in response to the reconfiguration of the building's massing or are to improve the livability of the building.

### **The Commission Should Review the Revised Project as a Modification of Consequence**

The changes proposed as a part of the Revised Project fall squarely within the scope of a modification of consequence as set forth in Subtitle Z, Sections 703.3 and 703.4 of the Zoning Regulations. The Zoning Regulations provide in relevant part that "Examples of a modification of consequence include, 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." 11-Z DCMR § 703.4. The Revised Project implicates the first and third examples cited in the foregoing section.

The Revised Project includes a change to a condition in the final order. Conditions A.1, A.2, and A.4 of the Decision in the Approved PUD require the Applicant to build in accordance with certain approved plans. *See* Order at 14. The Applicant seeks to amend those plans in accordance with the foregoing revisions and thereby amend such Conditions.

The Revised Project also includes a redesign or relocation of architectural elements from the final design of the Original Project. As noted above, the Applicant proposes that the Revised Project become smaller, less dense, and require fewer items of zoning flexibility.

The Revised Project is within the Zoning Regulations' definition of a modification of consequence and need not be reviewed as a modification of significance. The Zoning Regulations provide in relevant part that "Examples of a modification of significance include, but are not limited to, a change in use, change to proffered public benefits and amenities, change in required covenants, or additional relief or flexibility from the zoning regulations not previously approved." 11-Z § 703.6.

The Revised Project does not change the proffered public benefits and amenities (notably holding constant the number and level of affordability of the two affordable units even though the project itself grows smaller). Indeed the amount of affordable housing on a square footage basis actually increases under the Revised Project because the individual affordable units are slightly larger than proposed in the Original Project (i.e., the two affordable units increase by a total of 37 square feet relative to the two units in the Original Project). The location of the two affordable units remains unchanged. The Applicant does seek the flexibility, previously granted in Condition B.1.c of the Order, to vary the location of the affordable units in the building as long as the locations are proportional to the locations of the market rate units. The Applicant no longer seeks the previously-granted flexibility to vary the bedroom count or unit size of the affordable units.

The Revised Project does not propose a change of use or change in required covenants. The Revised Project still includes ground floor commercial uses and multiple dwelling residential uses above, all of which are permitted as a matter-of-right in the underlying zones. Overall, the Revised Project seeks less flexibility from the Zoning Regulations by removing the previously-approved penthouse setback relief. Moreover, other areas of zoning relief are reduced in magnitude. For instance, one of the two nonconforming closed courts has increased in size, becoming somewhat less nonconforming (i.e., it is now 16 feet in width and 176 square feet rather than the previously-approved 9 feet and 108 square feet, respectively). Accordingly, the overall scale of zoning relief has significantly decreased. With respect to the Revised Project's height along M Street, NW, the Revised Project does, by a *de minimis* amount, exceed the relief previously granted. The Original Project rises above the 60 foot height limit along M Street, NW by an amount of 1.33 inches, and the Revised Project rises above said 60 foot height limit by an amount of 1.58 inches (i.e., by an additional approximately 3 inches). However, this is not a new item of relief and the variation is truly minor in nature and not distinguishable by an observer from the public realm.

### **The Commission Should Approve the Revised Project**

The Commission should approve the requested modifications of consequence because (i) the requested modifications do not disturb any of the Commission's conclusions set forth in the Order and do not violate any requirements for approval of a PUD under the Zoning Regulations, and (ii) the overall effect of such modifications is to reduce the overall impact of the Project.

In the Order approving the Original Project, the Commission set forth more than a dozen conclusions of law underlying its decision. The Revised Project does not disturb any of those conclusions. *See* Exhibit B at 12-13. Moreover, the Revised Project does not abrogate any requirements set forth in Subtitle X or Subtitle Z of the Zoning Regulations applicable to a PUD.

More pragmatically, the Revised Project's overall effect is to reduce the impacts of the building constructed on the Property. The Revised Project is shorter and less dense than the Original Project, and the zoning flexibility is lesser in magnitude. One concern that the Commission raised with the Original Project—that its south facing façade was not sufficiently articulated—is no longer an issue because such façade has been significantly reduced in height. *See* page 33 of the Revised Plans. The Revised Project's rooftop, light well, and architectural changes that are all either consistent with or improvements to the design intent of the Original

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Project. Significantly, there is no proposed change in the number (and a slight increase in the size) of affordable units provided.

**Community and Agency Outreach**

There were no parties to the Approved PUD other than Advisory Neighborhood Commission (“ANC”) 2F, the ANC in which the Property is located. The Applicant has been in contact with the ANC’s single-member district representative prior to filing this application and will meet with the full ANC and neighbors of the Property in the coming weeks.

Because the Property is within the Shaw Historic District, the Original Project was reviewed and approved by the Historic Preservation Review Board prior to the issuance of the Order. The Applicant has been in touch with Historic Preservation Office staff (“HPO”), which is optimistic that the Revised Project will be found to be compatible with the Historic District given it is smaller and otherwise consistent with the Original Project. HPO expects the Board will review the Revised Project as a consent calendar item.

**Conclusion**

For the reasons given above, the Applicant respectfully requests that the Commission determine that the Revised Project is a modification of consequence and accordingly approve the same.

Thank you for your attention to this application.

Respectfully submitted,



Jeffrey C. Utz



David A. Lewis

Enclosures

## Certificate of Service

I certify that on or before June 27, 2018, I delivered a copy of the foregoing document via hand delivery or first class mail to the addresses listed below.



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David A. Lewis

Jennifer Steingasser (*3 copies, via courier*)

Joel Lawson

District of Columbia Office of Planning

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Anna Chamberlin (*2 copies, via courier*)

District Department of Transportation

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Attn: Jason Forman, Chairman

ANC Commissioner Charlie Bengel, 2F06 (*1 copy, via courier*)

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