

# Holland & Knight

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February 21, 2018

Mr. Matthew LeGrant, Zoning Administrator  
Office of the Zoning Administrator  
Department of Consumer and Regulatory Affairs  
1100 4th Street, SW, Room 3100  
Washington, DC 20024

**Re: Modification Request for Temporary Use  
Z.C. Order No. 02-38A  
425 M Street, SW (Square 542, Lot 826 (part of Record Lot 89))**

Dear Mr. LeGrant:

This letter is submitted on behalf of Waterfront 425 M Street, LLC (the "Owner") to request approval of a temporary use on property located at 425 M Street, SW (Square 542, Lot 826 (part of Record Lot 89)) (the "Subject Property"), which was previously approved by the Zoning Commission as a First-Stage Planned Unit Development ("PUD"). The Subject Property is located on the northwest corner of the intersection of 4<sup>th</sup> and M Streets, SW, and is presently vacant. A signed copy of the form requesting a modification of plans approved by the Zoning Commission is attached hereto as Exhibit A.

Pursuant to Z.C. Order No. 02-38A, dated November 19, 2007, and effective on January 25, 2008, the Zoning Commission approved a modification to a First-Stage PUD, a Second-Stage PUD, and a Zoning Map amendment to the C-3-C District<sup>1</sup> for Record Lot 89 in Square 542 (the "PUD Site"). The modified First-Stage PUD authorized the development of eight buildings on the PUD Site, including an office building at the Subject Property. Since that time, the Zoning Commission has approved two PUD extensions for the Subject Property (Z.C. Order Nos. 02-38C and 02-38E) and is currently reviewing (i) an application for a third PUD extension (Z.C. Case No. 02-38G); and (ii) an application for a Second-Stage PUD and a modification to the First-Stage PUD to convert the approved building on the Subject Property from primarily office use to primarily residential use (Z.C. Case No. 02-38I).

As shown on the plat and proposed rendering attached hereto as Exhibit B, the Owner proposes to temporarily locate a modular trailer on the southwest corner of the Subject Property to house a temporary space for the Southwest Public Library. The Owner intends to apply for a temporary certificate of occupancy for the library use for a period of one year, with occupancy anticipated to begin in the summer of 2018. Library use is permitted on the Subject Property as a

<sup>1</sup> The C-3-C District converted to the MU-9 District under the 2016 Zoning Regulations.

matter-of-right pursuant to 11-U DCMR §§ 202.1(I) and 515.1(a), and pursuant to 11-B DCMR § 204.1, any use allowed as a permitted use in a zone shall be allowed as a temporary use within that zone.<sup>2</sup>

Although the library use is otherwise permitted, temporarily locating the trailer on the Subject Property constitutes a minor modification to the plans approved by the Zoning Commission in Z.C. Order No. 02-38A. Pursuant to 11-A DCMR § 304.5, the Zoning Administrator is authorized to permit minor modifications to approved plans if the Zoning Administrator determines that the proposed modifications are consistent with the intent of the Zoning Commission in approving the application and the Zoning Commission did not also grant the same area of relief. The modifications permitted by 11-A DCMR § 304.5 include changes not to exceed 2% in height, lot occupancy, gross floor area, number of dwelling units, and number of parking or loading spaces, and the relocation of a building within five feet of its approved location.

The modification requested in this case is to locate a temporary trailer for library use on the Subject Property, and therefore does not trigger any of the modifications listed in 11-A DCMR § 304.5. The proposed temporary use is consistent with the intent of the Zoning Commission in approving the application, as evidenced in the case records for the prior PUD extensions, wherein the Zoning Commission and the community encouraged the Owner to activate the Subject Property with interim uses leading up to permanent redevelopment. The Owner has successfully activated the Subject Property with various interim uses and events in the past, including farmers' markets, charity events, block parties, sport leagues, and public seating. The library use would continue to activate the site, as encouraged by the Zoning Commission and the surrounding community. The proposed library use and associated trailer will be temporary and will be removed prior to permanent development of the Subject Property, which is currently under consideration by the Zoning Commission as part of Z.C. Case No. 02-38I.

This letter serves as the written request pursuant to 11-A DCMR § 304.6 for the above-stated modification. In fulfillment of the requirements of 11-A DCMR § 304.6, a copy of this request is being submitted to all parties to the underlying application, including Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Subject Property is located.

We would appreciate your prompt consideration of this request. Should you have any questions or need additional information, please let me know.

Sincerely,

HOLLAND & KNIGHT LLP



Christine M. Shiker

Jessica R. Bloomfield

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<sup>2</sup> Pursuant to 11-X DCMR § 310.2, the grant of a PUD prohibits any construction on a PUD site that is not authorized in the order approving the PUD, including development under matter-of-right standards. In this case, the proposed temporary library use does not constitute "construction" pursuant to 11-X DCMR § 310.2, and is therefore permitted despite the existing PUD approval.

**CERTIFICATE OF SERVICE**

I hereby certify that on February 21, 2018, a copy of this proposed modification request was served on the following as indicated below:

Advisory Neighborhood Commission 6D  
1101 4th Street, SW  
Washington, DC 20024  
Via US Mail

Tiber Island Cooperative Homes, Inc.  
429 N Street, SW  
Washington, DC 20024  
Via US Mail

Cornish Hitchcock  
Counsel for Tiber Island Cooperative Homes, Inc.  
Hitchcock Law Firm PLLC  
5614 Connecticut Avenue, NW  
No. 304  
Washington, DC 20015  
Via US Mail

Carrollsborg Square Condominium Association  
1804 T Street, NW  
Suite One  
Washington, DC 20009  
Via US Mail

Waterfront Tower Condominium Board  
c/o Hara Ann Bouganim  
Vice President  
1101 3<sup>rd</sup> Street, SW  
Unit 415  
Washington, DC 20024  
Via US Mail



Jessica R. Bloomfield  
Holland & Knight LLP

**EXHIBIT A**



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OFFICE OF THE ZONING ADMINISTRATOR



(last revised 6.23.17)

**REQUEST FOR MODIFICATION OF PLANS APPROVED BY THE ZONING COMMISSION**  
(Pursuant to Zoning Commission Order No. 08-06F, 11 DCMR A-304.5 through A-304.9)

Building Permit Application #: N/A (the "Application")

Property Address: 425 M Street, SW (the "Property")

Square: 542 Lot(s): 826

1. Provide the Order Number(s) (e.g., "ZC 12-34") for the Zoning Commission (the "ZC") that the property is subject to:  
ZC Order No.: 02-38A
2. Do the building permit plans submitted differ in any way (e.g., use, building envelope, façade design, shape, or floorplans) from the plans authorized by the Order(s), including any conditions of the Order(s) and the approved plans?  
 Yes. Provide a list of the proposed changes and illustrations comparing the portions of the "approved" plans that are proposed to be varied to the "proposed" plans. This should include highlighting changed features through graphic bubbling.  
 No. Skip to the signature line (#7) below to complete the form.
3. Are all proposed changes identified in #2 above solely limited to minor internal floorplan or mechanical changes not involving any standards identified in subsections A-304.5(a)-(d)?  
 Yes. Provide a written justification as to why the changes identified in #2 are limited to such minor internal floorplan or mechanical changes. No written request for ZA minor flexibility is required and skip to the signature line (#7) below to complete the form.  
 No. Continue to the next question.
4. Are any of the changes identified in #2 covered by flexibility specifically granted by a condition(s) of the Order(s)?  
 Yes, all of the changes. Provide a written justification highlighting the terms of the flexibility granted in the Order and describe how the proposed modifications are allowable pursuant to the flexibility. No written request for ZA minor flexibility is required and skip to the signature line (#7) below to complete the form.  
 Yes, some of the changes. Provide a written justification that identifies which of the proposed modifications are allowable pursuant to the flexibility granted in the Order. Continue to the next question to address the remainder of the proposed modifications that are not allowable pursuant to the flexibility.  
 No. Continue to the next question.
5. If the flexibility provided in the Order(s) does not cover some or all of the proposed modifications listed in the response to #2 above, or where no flexibility was provided in the Order(s), do the remaining proposed modifications qualify for the minor flexibility that the Zoning Administrator is authorized to grant under Section A-304.5?  
 Yes. Provide a written request for ZA minor flexibility as required by Section A-304.5. Make sure that this request addresses each criteria provided in Section A-304.5, including the requirement that the proposed modifications are consistent with the intent of the ZC in approving the relevant Order. Continue to the next question.  
 No. Skip to the signature line (#7) below to complete the form and then separately apply to the Zoning Commission for a modification pursuant to A-304.9.

6. In cases where a written request for ZA minor flexibility is submitted, all parties (including the affected ANC(s)) to the applicable ZC case listed in response to #1 must be served with a copy of the request for minor flexibility. Such a copy must include any supporting plan documents, as required by Section A-304.6. Enter the following information, including the email addresses (or mailing address if necessary) that the written request was sent to:

Date of service by Applicant: 2/21/2018 (attach a certificate of service)

ANC 6D : \_\_\_\_\_

ANC(SMD) 6D01 : \_\_\_\_\_

Parties: Tiber Island Cooperative Homes, Inc.

Carrolleburg Square Condominium Association

Waterfront Tower Condominium Board

7. Signature Waterfront 425 M Street, LLC  
By: FC Waterfront Member, LLC  
By: David Smith

Property owner (signature)

2.16.18  
Date

David.Smith@ForestCity.net  
Property owner or agent email address and phone number

202.496.6614

*For DCRA internal use only (execute as appropriate).*

- The ZA has received a written request for minor modifications to approved plans related to the Order above which the Applicant attests was served on all necessary parties. The ZA has determined that the proposed modifications are consistent with Section A-304.5. Therefore, the ZA is hereby providing written notice of APPROVAL.

Pursuant to A-304.5, no modified building permit may be issued during a 45 day period that begins on the date this report is sent to the Zoning Commission ("Commission") unless the Commission advises the ZA that it concurs that the modification is permitted by A-304.5.

Matthew Le...

Zoning Administrator signature

3-22-18

Date of approval

Date of Service: 3-23-2018

Forty-five day hold date: 5-7-2018

cc: Zoning Commission and all parties identified in #6 above

Attachments: Applicant's written request for ZA minor flexibility and supporting documents

- No written request for ZA minor flexibility is required.

\_\_\_\_\_  
OZA signature

\_\_\_\_\_  
Date of approval

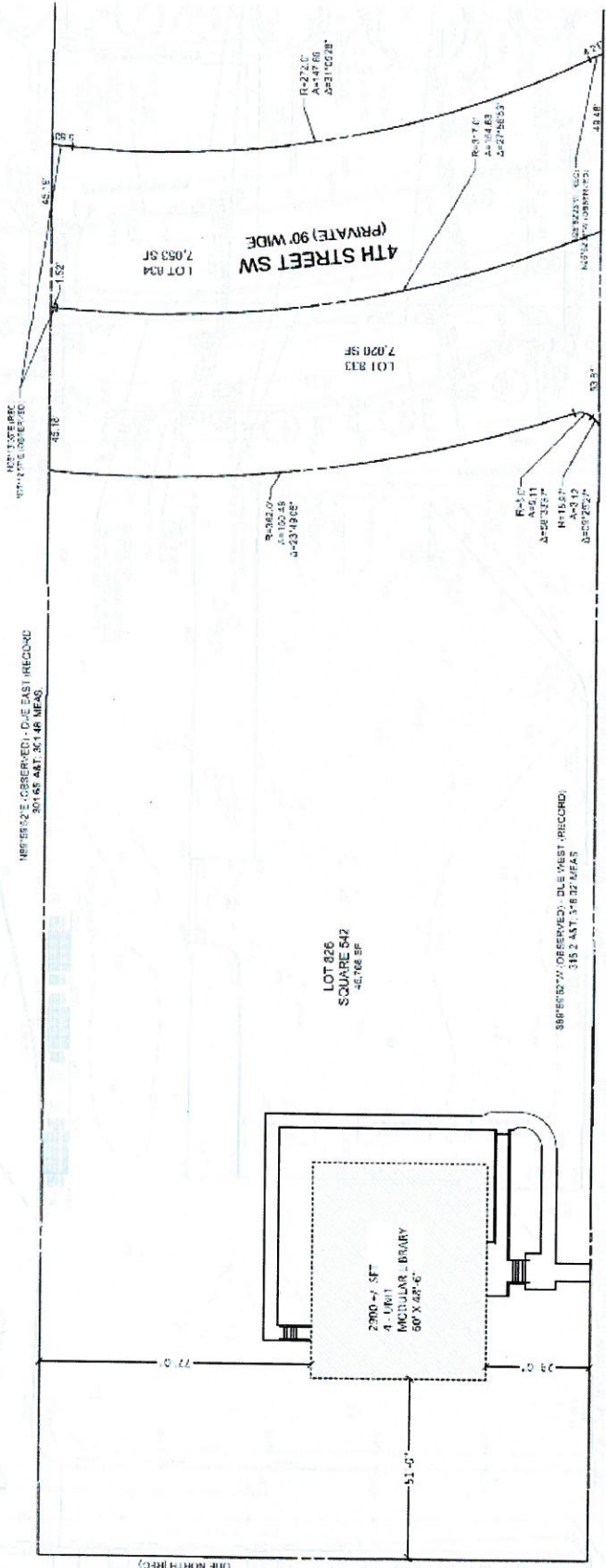
- The ZA DENIES the request for minor modifications to approved plans as inconsistent with Section A-304.5.

\_\_\_\_\_  
OZA signature

\_\_\_\_\_  
Date of denial

**EXHIBIT B**

152.00' NORTH (CONSTANT) (SEE NORTH REF.)



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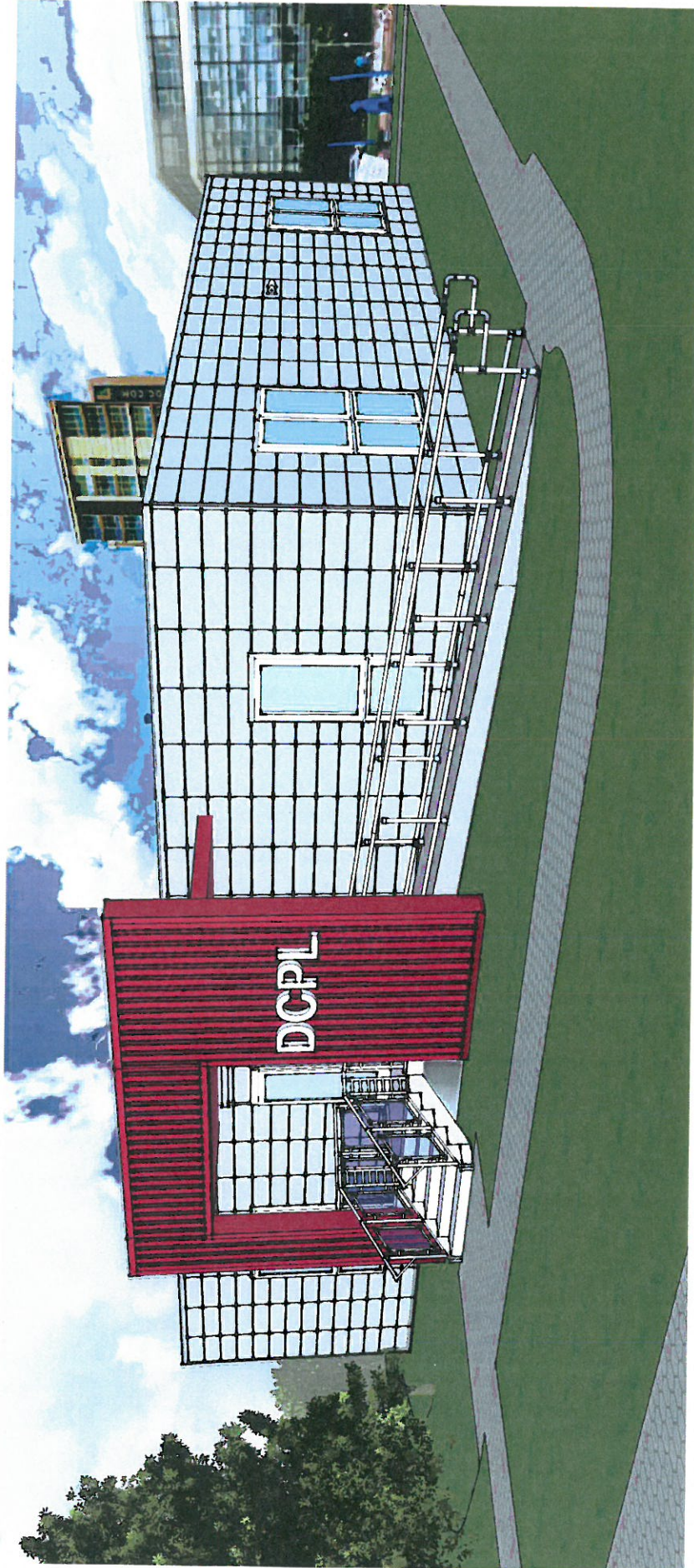
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VIEW FROM M SREET SW

