

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 15-31A**  
**Z.C. Case No. 15-31A**  
**1701 H Street Washington, LLC**  
**(Modification of Consequence of Planned Unit Development @ Square 4507)**  
**February 11, 2021**

Pursuant to notice, at its February 11, 2021, public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of 1701 H Street Washington, LLC (collectively the “Applicant”) pursuant to Subtitle Z § 703 of Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified), for a Modification of Consequence to Z.C. Order No. 15-31 (the “Original Order”) that approved a Consolidated Planned Unit Development (“PUD”) for Lots 936, 941, and 942 in Square 4507 (the “Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z. For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**I. BACKGROUND**

**PARTIES**

1. The following were automatically parties to the Application pursuant to Subtitle Z § 403.5:
  - Advisory Neighborhood Commission (“ANC”) 5D, in whose district the Property is located and so an “affected” ANCs pursuant to Subtitle Z § 101.8; and
  - ANC 6A, whose district is directly across Benning Road, N.E., from the Property and so an “affected” ANCs pursuant to Subtitle Z § 101.8.

**NOTICE**

2. On December 18 and 22, 2020, the Applicant served the Application on:
  - ANC 5D;
  - ANC 6A;
  - The Office of Planning (“OP”); and
  - The District Department of Transportation (“DDOT”). (Exhibit [“Ex.”] 2D.)

**PRIOR APPROVALS**

3. Pursuant to the Original Order, the Commission approved a consolidated PUD (the “Approved PUD”) to construct a mixed-use project (the “Building”) including 143,000 square feet of residential uses and ground floor retail. (Ex. 2.)

## II. THE APPLICATION

4. The Application, as amended, proposed to modify the Original Order to adjust the balconies on the third through sixth floors on the eastern façade of the Building by:
  - Removing the eight balconies on the northern and southern balcony columns to prevent privacy issues because these balconies were roughly 9.5 and 11 feet, respectively, away from windows looking into other units;
  - Removing the eight balconies on the two center balcony columns to match the proposed removal of the balconies on the flanking northern and southern balcony columns, although the Applicant acknowledged that this was an aesthetic preference and provided an alternative elevation showing the retention of these balconies in case the Commission preferred to retain these eight balconies; and
  - Adding five interior balconies on the second through sixth floors of the northern façade to provide additional outdoor space. (Ex. 2, 5, 5A1-A2.)
5. The Application asserted that the proposed net loss of 11 balconies would not adversely impact the Approved PUD because:
  - The eastern façade would continue to have 19 balconies on the seventh through tenth floors;
  - The northern façade would have five additional balconies;
  - 89 out of 181 units would continue to have balconies, a greater percentage than is typical in a multifamily building; and
  - The Building would continue to provide a significant amount of amenity space including a rooftop amenity room and outdoor terrace. (Ex. 2.)

## III. RESPONSES TO THE APPLICATION

### OP

6. OP submitted a December 23, 2020, report (Ex. 4, the “OP Report”) recommending approval of the Application because the requested modification would not be inconsistent with the Building because:
  - The removal of the balconies would protect the privacy of eight units and would be in keeping with the goals of the Approved PUD; and
  - The Building would still provide a substantial number of balconies and communal outdoor space for residents.

### ANCs

7. ANC 5D submitted a February 9, 2021, report (Ex. 6, the “ANC 5D Report”) stating that at the ANC’s duly noticed February 9, 2021, public meeting, at which a quorum was present, the ANC:
  - Identified the following issues and concerns
    - Maintaining the integrity of the Approved PUD, including the balconies, which the ANC had supported; and
    - The privacy of residents; and

- Voted to support the Application because the ANC concluded that the Application satisfactorily addressed the ANC's concerns by protecting residents' privacy while limiting the impact of the changes on the Building that the ANC supported.
8. ANC 6A did not submit a written report.

### 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 proposed change to a condition in the final order” and “a redesign or relocation of architectural elements” as examples of Modifications of Consequence.
4. 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 ANCs 5D and 6A.
5. 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 request to modify the conditions and architectural elements approved by the Original Order, and therefore the Application can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission concludes that the Application's proposed removal of the eight balconies on the northern and southern balcony columns, together with the proposed addition of the five new interior balconies on the northern façade, is consistent with the Approved PUD as a minor change to protect the privacy of the affected units and the Building, as amended, would maintain a substantial number of balconies and communal outdoor space for building residents that was a public benefit of the Approved PUD.
7. The Commission concludes, however, that the Application's request to remove the eight balconies on the two center balcony columns solely for aesthetic reasons is not consistent with the Approved PUD because the asserted aesthetic concern is an insufficient basis to reduce the benefit provided by these balconies.
8. The Commission therefore approves only, as depicted on Sheet SK09a of Exhibit 5A1:
  - The removal of only the eight balconies on the northern and southern balcony columns on the eastern façade; and
  - The addition of the five interior balconies on the northern façade.

### GREAT WEIGHT TO RECOMMENDATIONS OF OP

9. The Commission must 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).)
10. The Commission finds OP’s recommendation to approve the Application persuasive and concurs in that judgment.

### GREAT WEIGHT TO WRITTEN REPORT OF THE ANC

11. 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).)
12. The Commission finds the ANC 5D Report’s concerns to protect both the Approved PUD and residents’ privacy persuasive and concurs with the ANC’s support for the Application as satisfactorily addressing both of these concerns.
13. Since ANC 6A did not submit a written report to the record, there is nothing to which the Commission can afford great weight.

## 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 Condition No. A.1. of Z.C. Order No. 15-31 to allow the removal of the eight balconies on the northern and southern balcony columns of the eastern façade and the addition of five interior balconies on the norther façade of the approved project, to read as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions in **bold** and underlined text):

### A. Project Development

1. The Project shall be developed in accordance with the architectural drawings submitted into the record on and dated October 31, 2016, ~~as~~ (Exhibit 41B1-41B2 of Z.C. Case No. 15-31), as modified by:

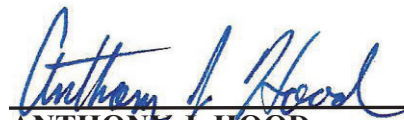
- The drawings submitted into the record on **and dated** December 12, 2016, as (Exhibit 46A, **of Z.C. Case No. 15-31**);
- **The drawings submitted to the record on February 8, 2021, (Exhibit 5A1-A2 in Z.C. Case No. 15-31A), except that the Applicant shall retain the eight balconies on the center balcony columns of the third through sixth floor of the eastern facade as shown on Sheet No. SK09a (Option a);**


and as further modified by the guidelines, conditions, and standards herein (collectively, the "Plans").

All other conditions of Z.C. Order No. 15-31 remain unchanged and in effect.

**VOTE (Feb. 11, 2021): 5-0-0** (Robert E. Miller, Peter G. May, Michael G. Turnbull, Anthony J. Hood, and Peter A. Shapiro to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 15-31A shall become final and effective upon publication in the *DC Register*; that is, on May 21, 2021.

  
 ANTHONY J. HOOD  
 CHAIRMAN  
 ZONING COMMISSION

  
 SARA A. BORDIN  
 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.