

MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: ^{JLS}
Jennifer Steingasser, Deputy Director
Anne Fothergill, Development Review Specialist
DATE: December 23, 2020
SUBJECT: **ZC Case No. 15-31Q** Modification of Consequence to the approved 777 17th Street
Planned Unit Development – Square 4507, Lots 936, 941, and 942 (Z.C. Order 15-31)

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) concurs with the Applicant's submission that the proposal qualifies as a **modification of consequence** and that the proposed changes meet the criteria of Subtitle Z 703.4. As such, OP has no objections to the Applicant's request and recommends that the proposed modifications be **approved**.

II. BACKGROUND

The Zoning Commission held a public hearing on the Planned Unit Development (PUD) application of 777 17th Street LLC on September 29, 2016. The Zoning Commission approved the PUD in Order No. 15-31 dated March 10, 2017. The approved project was appealed and the DC Court of Appeals dismissed the appeal in June 2019. The approved PUD will be developed by 1701 H Street LLC.

III. MODIFICATION REQUEST

Subtitle Z § 703 provides for Zoning Commission consideration of a modification of consequence to an approved Planned Unit Development (PUD), and the Applicant is requesting modifications to the approved plans.

The Applicant is proposing to reduce the number of balconies on the eastern façade of the building. In the approved plans, two columns of balconies on floors 3-6 were approximately ten feet from the living area of units facing H Street and Benning Road. The Applicant has determined that those balconies would intrude upon the privacy of eight other residential units and proposes their removal from the plans. Additionally, the Applicant proposes to remove the two other columns of balconies on the same lower floors for aesthetic reasons. The upper balconies on floors 7-10 of this façade would not be affected. Overall the Applicant proposes to remove 16 balconies on the eastern façade and 19 balconies would remain on that façade.

The Applicant also proposes to add a column of five interior balconies on the northern elevation of the building wing that extends along Benning Road. With the addition of these five balconies, the proposed net loss of balconies would be 11 for the entire building.

IV. OP ANALYSIS

703 CONSENT CALENDAR – MINOR MODIFICATION, MODIFICATION OF CONSEQUENCE, AND TECHNICAL CORRECTIONS TO ORDERS AND PLANS

- 703.1 *This procedure shall allow the Commission, in the interest of efficiency, to make, without public hearing, minor modifications, modifications of consequence, and technical corrections to previously approved final orders and plans.*
- 703.2 *For purposes of this section, “minor modifications” shall mean modifications that do not change the material facts upon which the Commission based its original approval of the application or petition.*
- 703.3 *For the purposes of this section, the term “**modification of consequence**” shall mean a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance*
- 703.4 *Examples of **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.*
- 703.5 *For the purposes of this section, a “**modification of significance**” is a modification to a contested case order or the approved plans of greater significance than a modification of consequence. Modifications of significance cannot be approved without the filing of an application and a hearing pursuant to Subtitle Z § 704.*
- 703.6 *Examples of **modifications 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.*

A “modification of consequence” requires the establishment of a timeframe for the parties in the original proceeding to file comments on the request and the scheduling of a date for Commission deliberations, while a more substantive “modification of significance” requires the holding of a public hearing, in accordance with Subtitle Z § 704.

Overall the proposed changes are intended to protect the privacy of eight units and would be in keeping with the goals of the original PUD which included providing balconies to residential units. With this proposed change, there would be a loss of 11 balconies. Overall, 89 of the 181 units in the building would have balconies, which is a significant number of balconies on a multifamily building. The approved plans for the new building also show a rooftop terrace, which will provide outdoor space for residents to use. OP recommends approval of the modification of consequence.