

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 16-06D**

**Z.C. Case No. 16-06D**

**JEMAL/PTM LAZRIV WATER II L.L.C.**

**Design Review Modification of Consequence @ 1900 Half Street, SW  
Square 666, Lot 15**

**April 27, 2020**

On April 27, 2020, at its properly noticed public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of JEMAL/PTM LAZRIV WATER II L.L.C. (the “Applicant”) for a modification of consequence to a design review case originally approved in Z.C. Order No. 16-06, as modified in Z.C. Case Nos. 16-06A through 16-06C, for property located at 1900 Half Street, SW (Square 15, Lot 666) (the “Property”). The Application sought to permit education use in the approved building at the Property and to add 2,400 square feet of gross floor area (“GFA”) to the building. The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (“DCMR”) (Zoning Regulations of 2016 [the “Zoning Regulations”] to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**Prior Zoning Commission Approvals**

1. Pursuant to Z.C. Order No. 16-06, effective as of August 26, 2016, as modified by Z.C. Order No. 16-06A, effective as of May 11, 2018, and Z.C. Order No. 16-06B, effective as of December 21, 2018, the Commission approved the adaptive reuse and renovation of the existing office building on the Property into a mixed-use apartment house with approximately 502,395 square feet of total GFA (4.53 floor area ratio (“FAR”)), approximately 453 dwelling units, and approximately 16,542 square feet of retail use (the “Approved Project”). In Z.C. Order No. 16-06C, dated November 18, 2019, and effective as of \_\_\_\_\_ **[OAG TO INSERT FOLLOWING ISSUANCE OF ORDER]** the Zoning Commission approved modifications to the approved public space improvements and infrastructure surrounding the Property.

**Parties**

2. The only party to Z.C Case No. 16-06 *et seq.*, other than the Applicant, was Advisory Neighborhood Commission (“ANC”) 6D, the “affected” ANC pursuant to 11-Z DCMR § 101.8.

**The Property**

3. The Property is located in the southwest quadrant of the District of Columbia in the Buzzard Point neighborhood. The Property is bounded by T Street to the north, the Anacostia River to the east, U Street to the south, and Water Street and Half Street to the west. The Property is the only lot in Square 666 and has an angled rectangular shape with a total land area of approximately 110,988 square feet. The Property is zoned CG-5.

4. Until recently the Property was improved with an existing and mostly vacant 90-foot tall office building that was constructed circa 1976 for use by the General Services Administration. The building is currently under construction consistent with the Commission's prior approvals in Z.C. Order Nos. 16-06 *et seq.*

### **The Application**

5. On March 3, 2020, the Applicant filed the Application requesting a modification of consequence to permit educational use within the Approved Project and to add 2,400 square feet of new GFA into the Approved Project.
6. The Application included a Certification of Service demonstrating that the Applicant served the Application on ANC 6D and the Office of Planning ("OP") on March 3, 2020. (Ex. 2 at 8.)
7. The Application stated that the Approved Project includes a total of 16,542 square feet of GFA devoted to retail space on the P1 and ground floor levels. The Application proposed to permit the entirety of the retail space to be dedicated to education use, and to also construct an additional 2,400 square feet of GFA by filling in a portion of the previously-approved two-story retail space at the ground level. The additional 2,400 square feet would also be devoted to educational use. Thus, the Application's overall request was to permit a total of 18,942 square feet of GFA to be devoted to educational use in the Approved Project. The Application also included a request to maintain the approved retail use such that the Applicant would have the ability to convert some or all of the 18,942 square feet of educational GFA to retail use in the future.
8. Educational use is permitted as a matter-of-right at the Property but is not a use that was previously approved by the Zoning Commission.<sup>1</sup> Floor plans showing the location of the proposed educational were included in the Application at Exhibit 2F.
9. The Application stated that the educational use operator would be Eagle Academy Public Charter School ("Eagle Academy") and the school use would be for pre-kindergarten through third grade students. The portion of the building devoted to the educational use would accommodate approximately 240-260 students and 35 teachers, faculty, and staff. The additional 2,400 square feet of GFA would result in a 0.47% increase in FAR to the Approved Project.
10. With respect to traffic operations associated with the educational use, the Application stated that morning drop-off would occur between 8:15 a.m. and 9:00 a.m. and afternoon pick-up would occur between 3:45 p.m. and 4:15 p.m. During these time periods, Eagle Academy would have approximately four staff members opening car doors and helping children into and out of vehicles.
11. In order to accommodate the school's operations, the Applicant proposed to dedicate five parking spaces on the east side of Water Street, SW adjacent to the Property as pick-up and drop-off only

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<sup>1</sup> A small portion of the southeast corner of the existing building is clipped by the 100-year floodplain, which is mapped at 10.5 feet in elevation. As part of the original Zoning Commission approval in Z.C. Order No. 16-06, the Applicant is re-grading the land adjacent to the building to effectively raise the shoreline above the 11-foot elevation contour, which removes the building from the 100 year floodplain entirely. Following completion of the re-grading work the Applicant will submit a "Letter of Map Amendment" to the Federal Emergency Management Agency to officially have the building removed from the floodplain. Nevertheless, the portion of the building proposed for education use is in the northwest corner of the building and currently well outside of the 100 year floodplain at the southeast corner. *See* p. 46 of the approved architectural drawings in Z.C. Case No. 16-06 (Ex. 29) showing the existing and future flood plain location.

spaces for one hour in the morning (8:00 a.m. to 9:00 a.m.) and one hour in the afternoon (3:30 p.m. to 4:30 p.m.). The Applicant discussed the parking, pick-up, and drop-off proposal with DDOT's Safe Routes to School program manager prior to filing the Application.

12. With respect to on-site parking, the educational use requires less on-site parking than the approved retail use (0.25 parking spaces per 1,000 square feet of public school use, compared to 1.33 parking spaces per 1,000 square feet of retail use). The Approved Project includes a total of 277 parking spaces (42 retail spaces and 235 residential spaces). Thus, there will be more than enough parking spaces within the building for the proposed educational use, including additional new parking spaces generated by the 2,400 square feet of GFA added to the building
13. On March 20, 2020, the Applicant submitted a transportation memorandum prepared by Gorove/Slade Associates, dated March 19, 2020 (Ex. 7) (the "Transportation Memorandum"). The Transportation Memorandum presented a comparison of the traffic and operational impacts related to the educational use. Based on a trip generation comparison of the approved residential and retail uses, the Transportation Memorandum found that the educational use would generate fewer trips in the afternoon peak hour and slightly more trips in the morning peak hour than the approved retail use. The Applicant therefore performed a revised vehicular analysis for the morning peak hour to study the effects of the educational use on nearby intersections. Based on the revised analysis, the Transportation Memorandum made the following conclusions:
  - i. The revised development program would not have a detrimental impact on the surrounding roadway network;
  - ii. None of the study area intersections were found to have unacceptable delays and no additional mitigations were warranted;
  - iii. The educational use would generate a manageable number of trips that could be accommodated by the building's parking garage for staff and the pick-up/drop-off lane on Water Street, SW for parents;
  - iv. The proposed pick-up/drop-off lane on Water Street would accommodate students who are driven to and from school within 20 minutes before and after the arrival and dismissal periods; and
  - v. A rigorous TDM plan was proposed with elements related specifically to students, faculty/staff, and school-wide operations. *See* TDM Plan at pp. 4-5 of the Transportation Memorandum.
14. As set forth in Finding of Fact Nos. 29-30, the District Department of Transportation ("DDOT") reviewed the Applicant's Transportation Memorandum and confirmed that the proposed educational use would not result in significant impacts to the surrounding transportation network. *See* DDOT email comments submitted on March 20, 2020 (Ex. 6). DDOT's comments stated that it did not object to the Application so long as the Applicant agreed to (i) implement the TDM plan included in the Transportation Memorandum; and (i) implement the school pick-up and drop-off plan included in the Transportation Memorandum and coordinate with DDOT's Safe Routes to School Program in the future if the plan needs to be changed. The Applicant agreed to both of these conditions (*see* letter from the Applicant at Ex. 9.)

### **Waiver Requested**

15. The Application included a request that the Commission consider and process the Application as a modification of consequence instead of as a modification of significance.
16. Pursuant to 11-Z DCMR § 703.6, “examples” of modifications of significance include but are not limited to a change in use, and pursuant to 11-Z DCMR § 703.5, modifications of significance cannot be approved without a public hearing. The Application proposed a change in use to the Approved Project and is therefore an “example” of a modification of significance. However, the Applicant requested a waiver pursuant to 11-Z DCMR § 101.9 for the Commission to review and process the Application as a modification of consequence without a public hearing.
17. Pursuant to 11-Z DCMR § 101.9, the Commission may, for good cause shown, waive any of the provisions of Subtitle Z if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law. The Commission finds that the Applicant demonstrated good cause to waive the provisions of 11-Z DCMR §§ 703.5 and 703.6 and that doing so would not prejudice the rights of any party is not prohibited by law.
18. Good Cause Shown. The Applicant provided evidence of good cause shown for permitting the proposed change in use to be processed as a modification of consequence. Specifically, the Applicant submitted information on Eagle Academy’s current operations, its imminent need to relocate, and its inability to secure a lease at another location. Eagle Academy currently operates two campuses: one at 1017 New Jersey Avenue, SE (the “Capitol Riverfront Campus”) and one in Ward 8. The Capitol River Campus lease was recently terminated such that Eagle Academy is required to vacate no later than June 15, 2020.
19. Eagle Academy currently serves 176 students and employs 16 teachers and 13 staff members at the Capitol Riverfront Campus. Students range in age from 3 years (pre-kindergarten) to 8 years (3rd grade). With all of the new residential buildings being constructed in the Buzzard Point and surrounding neighborhoods, Eagle Academy anticipates growing in the near future and must remain open to serve existing and new families moving into the area.
20. The Application explained that prior to the lease termination Eagle Academy was already searching for a more permanent campus within the Navy Yard/Buzzard Point neighborhood. The Application stated that Eagle Academy had pursued a variety of leases in a range of spaces, including in new mixed-use development projects, existing historic buildings, temporary spaces in churches, and ground floors of apartment buildings, among others, but that no landlords were willing to seriously negotiate with Eagle Academy. Eagle Academy also considered moving students from the Capitol Riverfront Campus to its Ward 8 campus. However, the Ward 8 campus is already at capacity and cannot reasonably serve students who live in Ward 6. The Property was the first and only location that was appropriate for an early childhood charter school, could provide sufficient space for Ward 6 students, and could be a long-term solution to keep Eagle Academy in the community.
21. With respect to timing, the Applicant provided evidence that Eagle Academy needs to reopen its doors in August, 2020, to begin the 2020 academic school year on time. Doing so requires obtaining a building permit to deliver classrooms, workrooms, offices, and multipurpose rooms for educational uses, and obtaining a certificate of occupancy for public charter school use.

Neither of those actions can occur without approval of the subject zoning Application.

22. The Application further explained that students and families are depending on Eagle Academy to open in August, 2020. Indeed, the Applicant stated that Eagle Academy is already approaching enrollment capacity for the 2020 school year and that if it cannot open families would have to find schools in other neighborhoods of the District. The only other schools with pre-kindergarten through third-grade classes in the immediate neighborhood are Van Ness Elementary School and Amidon-Bowen; however, both of these schools are close to capacity and cannot accommodate Eagle Academy's students if it does not open. Given that there are no other viable locations for Eagle Academy in the neighborhood, opening at the Property is the only way for Eagle Academy to continue to serve its enrolled students and maintain stability for its families.
23. The timing required to process a modification of significance is approximately 5-7 months. Given that Eagle Academy cannot find a matter-of-right space in the surrounding neighborhood, it would be forced to open late if the Application was processed as a modification of significance, thus leaving many District families without a viable school option for their children in the fall of 2020. Therefore, based on the foregoing, the Commission finds that there is good cause shown to waive the standards of 11-Z DCMR §§ 703.5 and 703.6 to permit a change in use to be processed as a modification of consequence without a hearing.
24. No Prejudice to the Rights of Any Party. The Application stated, and the Commission agrees, that the waiver will not prejudice the rights of any party. The only party to the underlying design review case was ANC 6D. The Applicant first presented its proposal to the ANC at its regularly scheduled and duly noticed public meeting of November 18, 2019, at which the ANC voted unanimously (5-0-0) to "support the Eagle Academy Public Charter School's request to relocate its campus to 1900 Half Street SW." (Ex. 2G.)
25. On April 13, 2020, the Applicant presented the subject zoning request at ANC 6D's regularly scheduled and properly noticed public meeting and ANC voted 4-0-2 to support the Application so long as the Applicant's lease terms permit returning some of the space to retail use if Eagle Academy does not meet target enrollment numbers in five years." (Ex. 8, pp. 1-2.) As stated in the Applicant's letter dated April 15, 2020 (Ex. 9), and as further explained in Finding of Fact No. 33, the Applicant agreed to this condition.
26. Therefore, given that the only party to the underlying case supports the Application with one condition with which the Applicant agrees, the Commission finds that there will be no prejudice to the rights of any party by granting a waiver from the requirements of 11-Z DCMR §§ 703.5 and 703.6 to permit the application to be processed as a modification of consequence.
27. Not Otherwise Prohibited by Law. Waiving the requirement that a change in use must be processed as a modification of significance is not prohibited by law. Indeed, the Zoning Regulations specifically allow for the Commission to "waive any of the provisions" of Subtitle Z. See 11-Z DCMR § 101.9. As clearly demonstrated by the Applicant, the Commission finds that there is good cause to grant the waiver and that doing so will not prejudice the rights of any party or is prohibited by law.

## **Responses to the Application**

### **OP Report**

28. OP submitted a report dated March 20, 2020. (Ex. 4.) The OP report stated that OP “concur[s] with the Applicant’s submission that the proposed use change constitutes a modification of significance pursuant to Z § 703.6” but that “OP does not object to the Applicant’s request that the Commission waive Z §§ 703.5 and 703.6 to permit a change in use to be processed as a modification of consequence.” (Ex. 4, p. 1.) The OP report stated that the Applicant’s request to process the Application as a modification of consequence “stems from the accelerated timeline that is needed to meet the August opening” for Eagle Academy.” (Ex. 4, p. 2.)

### **DDOT Report**

29. DDOT submitted comments to the record via email on March 20, 2020 (Ex. 6) which stated that it worked with the Applicant to establish pick-up and drop-off procedures and evaluate traffic impacts associated with the educational use. DDOT’s email stated that it “determined that there would be no significant impacts to the surrounding transportation network and does not object to the approval of this application as a [m]odification of [c]onsequence with the following conditions:

- i. The Applicant will implement the Transportation Demand Management (TDM) plan outlined in the March 19, 2020 Transportation Memorandum to encourage carpooling and other non-single occupancy vehicle modes of travel; and
- ii. The Applicant will implement the school pick-up/drop-off plan outlined in the March 19, 2020 Transportation Memorandum. The Applicant should coordinate with DDOT’s Safe Routes to School Program in the future if the plan needs to be changed.

30. As stated in the Applicant’s April 15, 2020 letter (Ex. 9), the Applicant agreed to both of DDOT’s conditions.

### **ANC Report**

31. Included as Exhibit G to the Application (Ex. 2G) was a letter from ANC 6D dated November 19, 2019, prior to submission of the Application to the Commission, stating that at its regularly scheduled and properly noticed public meeting on November 18, 2019, with a quorum present, ANC 6D voted 5-0-0 to support Eagle Academy’s request to relocate its campus to 1900 Half Street, SW.

32. On March 17, 2020, ANC 6D submitted a letter requesting that the Commission schedule the public meeting on the case for April 27, 2020, in order to give the ANC time to submit comments on the zoning Application. (Ex. 5.)

33. On April 14, 2020, ANC 6D submitted a resolution stating that at a regularly scheduled and properly noticed public meeting on April 13, 2020, with a quorum of commissioners present, the ANC voted 4-0-2 to support the Application “with the caveat that the Applicant’s lease terms permit returning some of the space to retail if Eagle [Academy] does not meet target enrollment numbers in five years.” (Ex. 8, pp. 1-2.) As stated in the Applicant’s April 15, 2020 letter (Ex. 9), the Applicant agreed to ANC’s condition.

### **Applicant's Response to Comments on Application**

34. On April 15, 2020, the Applicant submitted a letter (Ex. 9) requesting that the Commission expedite its review of the Application and deliberate on the merits of the case at its April 27, 2020 public meeting. The letter stated that the Application already had support from all parties to the original case, which in this case was only ANC 6D. In the letter the Applicant committed to comply with the one condition in ANC 6D's letter to include lease terms that permit returning some of the space to retail if Eagle Academy does not meet target enrollment numbers in five years.
35. The Applicant's letter also noted that OP had already submitted a report in support of the Application with no conditions. (Ex. 4.) OP's report also supported the Applicant's request for the Commission to waive 11-Z DCMR §§ 703.5 and 703.6 to permit the proposed change in use to be processed as a modification of consequence.
36. Finally, the Applicant's letter acknowledged the comments submitted by DDOT via email on March 20, 2020 (Ex. 6), which stated that it did not object to approval of the Application as a modification of consequence with the two conditions stated in Finding of Fact No. 29. The Applicant's letter stated that it would comply with both of DDOT's conditions to implement the TDM plan and the school pick-up/drop-off plan, as outlined in the Transportation Memorandum, and coordinate with DDOT's Safe Routes to School Program in the future if the plan needs to be changed.

### **CONCLUSIONS OF LAW**

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.

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.”

Subtitle Z § 703.4 states that “[e]xamples 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.”

Subtitle Z § 703.6 states that “[e]xamples 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” (emphasis added).

Although the subject Application requests a change in use and is therefore an “example” of a modification of significance, the Applicant requested a waiver pursuant to 11-Z DCMR § 101.9 for the Commission to review and process the Application as a modification of consequence without a hearing.

Based on Findings of Facts herein, the Commission concludes that the Application meets the standards of 11-Z DCMR § 101.9 that there is good cause to process the Application as a

modification of consequence and that doing so does not prejudice the rights of any party or is not prohibited by law. Thus, the Commission hereby waives the provisions of 11-Z DCMR §§ 703.5 and 703.6 to permit the change in use to be processed as a modification of consequence without a hearing.

The Commission also concludes that the Applicant satisfied the requirement of 11-Z DCMR § 703.13 to serve the Application on all parties to the original proceeding, which in this case was ANC 6D. The Commission provided ANC 6D with an opportunity to respond to the request as required by 11-Z DCMR § 703.17(c)(2), and ANC 6D submitted a letter in support of the Application.

#### **“Great Weight” to the Recommendations of OP**

Pursuant to § 13(d) 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 (2001)) and 11-Z DCMR § 405.8, the Commission must give “great weight” to the recommendations of OP. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

The Commission notes OP’s lack of objection to the Application being considered as a modification of consequence. The Commission finds persuasive OP’s recommendation that the Commission approve the Application and therefore concurs in that judgment.

#### **“Great Weight” to the Written Reports of the ANC**

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.); see 11-Z DCMR § 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).)

The Commission finds the issues and concerns of the ANC’s report persuasive because the ANC found that the educational use would be appropriate at the Property, with the one caveat that the Applicant include lease terms that permit returning some of the space to retail if Eagle Academy does not meet target enrollment numbers in five years, with which the Applicant agreed. The ANC otherwise identified its support for the Application. The Commission concurs with the ANC’s support in approving the Application.

### **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 Applicant’s request for a modification of consequence to incorporate educational use into the Approved Project and to add an additional 2,400 square feet of GFA into the Approved Project, subject to the architectural drawings at Exhibit 2F. Accordingly, the Approved Project may include a total of 18,942 square feet of educational use, all of which may be converted back to retail use in the future. The Application is approved with the following conditions:



- i. The Applicant shall implement the Transportation Demand Management plan outlined in the March 19, 2020 Transportation Memorandum (Ex. 7) to encourage carpooling and other non-single occupancy vehicle modes of travel; and
- ii. The Applicant shall implement the school pick-up/drop-off plan outlined in the March 19, 2020 Transportation Memorandum (Ex. 7). The Applicant shall coordinate with DDOT's Safe Routes to School Program in the future if the plan needs to be changed.

**VOTE (April 27, 2020): 5-0-0**

(Peter A. Shapiro, Robert E. Miller, Anthony J. Hood, Peter G. May, and Michael G. Turnbull to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 16-06D shall become final and effective upon publication in the *DC Register*; that is, on \_\_\_\_\_.