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VIA IZIS AND HAND DELIVERY

Zoning Commission for the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

**Re: Application for a Modification of Consequence to Design Review
Z.C. Case No. 16-06 *et seq.*
1900 Half Street, SW (Square 666, Lot 15)**

Dear Members of the Commission:

On behalf of JEMAL/PTM LAZRIV WATER II L.L.C. (the “Applicant”), the owner of property located at 1900 Half Street, SW (Square 666, Lot 15) (the “Property”), we hereby submit an application for a Modification of Consequence to the above-referenced design review case approved in Z.C. Order No. 16-06, as amended in Z.C. Case Nos. 16-06A through 16-06C.

The modification is requested to permit education use in the approved building at the Property. Education use is permitted as a matter-of-right at the Property but is not a use that was previously approved by the Zoning Commission. The Applicant also requests an increase of approximately 2,400 square feet of gross floor area (“GFA”) (0.47% increase in FAR compared to the approved project) that would be dedicated to the education use. The education operator is Eagle Academy Public Charter School (“Eagle Academy”) and the school use would be for pre-kindergarten through third grade students.

Pursuant to 11-Z DCMR § 703.6, “examples” of Modification of Significance include but are not limited to a change in use. Pursuant to 11-Z DCMR § 703.5, Modifications of Significance cannot be approved without the filing of an application and a hearing pursuant to 11-Z DCMR § 704. In this case, the Applicant requests a change in use to permit education uses. However, and as described herein, Eagle Academy’s current lease is being terminated in June 2020, and the school needs to reopen in August 2020 to serve its current and future families. Eagle Academy has made multiple attempts to lease matter-of-right space in other buildings in the area but has been unable to do so. **Therefore, given the time constraints for Eagle Academy to relocate and open in time for the 2020 academic school year, the Applicant respectfully requests that the Commission**

waive the provisions 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.

The Commission has the authority to grant such a waiver pursuant to 11-Z DCMR § 101.9, which allows the Commission to waive any of the provisions of Subtitle Z for good cause shown if, in the judgement of the Commission, the waiver would not prejudice the rights of any party and is not otherwise prohibited by law. As will be demonstrated below, this application meets the standards of 11-Z DCMR § 101.9 for the Commission to grant a waiver from 11-Z DCMR §§ 703.5 and 703.6 and process the case as a Modification of Consequence.

Based on the foregoing, the subject application is submitted pursuant to 11-Z DCMR § 703, which allows the Zoning Commission to approve Modifications of Consequence without a public hearing. Submitted herewith is Form 100 – Application Signature Page (Exhibit A) and a letter from the Applicant authorizing Holland & Knight LLP to file and process the application (Exhibit B). Also included is a check in the amount of \$1,300 for the filing fee.

I. The Property and Approved Project

A. The Property

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.

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 Zoning Commission’s prior approvals in Z.C. Order Nos. 16-06 *et seq.* and is being developed as a residential building.

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 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.

B. Prior Zoning Commission Approvals

Pursuant to Z.C. Order No. 16-06, effective as of August 26, 2016 (Exhibit C), as modified by Z.C. Order No. 16-06A, effective as of May 11, 2018 (Exhibit D) and Z.C. Order No. 16-06B, effective as of December 21, 2018 (Exhibit E), the Zoning Commission approved the adaptive reuse of the existing building on the Property into a mixed-use apartment house with

approximately 502,395 square feet of total GFA (4.53 FAR), approximately 453 dwelling units, and approximately 16,542 square feet of retail use (the “Approved Project”).

In Z.C. Case No. 16-06C, the Zoning Commission approved a modification to the extent of the approved public space improvements and infrastructure surrounding the Property. The application was approved on November 18, 2019, and the Applicant’s draft order was submitted on November 22, 2019, but the Order has not been issued as of the date of this filing.

II. Requested Modification of Consequence

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 Applicant now proposes to use the entirety of the retail space for education uses and to construct an additional 2,400 square feet of GFA in the building 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 the educational use. Approximately 240-260 students and 35 teachers, faculty, and staff will be able to be accommodated within the building.

A copy of the approved P1 and ground floor plans showing the location and extent of the proposed education use is attached at Exhibit F. Based on this proposal, the Applicant requests approval to dedicate a total of 18,942 square feet of GFA in the building to educational uses (16,542 sf existing retail space + 2,400 sf of additional GFA). Out of an abundance of caution, the Applicant requests that the Commission maintain the Approved Project’s approved retail use so that it has the option to convert some or all of the space back to retail use in the future.

With respect to traffic operations, morning drop-off will occur between 8:15 a.m. and 9:00 a.m. and afternoon pick-up will occur between 3:45 p.m. and 4:15 p.m. During these time periods, Eagle Academy will have approximately four staff members opening car doors and helping children into and out of vehicles. In order to accommodate the school’s operations, the Applicant proposes to dedicate five parking spaces on the east side of Water Street adjacent to the Property as pick-up and drop-off only 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 has discussed this proposal with DDOT’s Safe Routes to School program manager who has agreed with this concept.

In addition, the proposed 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). Therefore, with a total of 277 parking spaces approved for the building (42 retail spaces and 235 residential spaces) there will be more than enough parking spaces within the building for the proposed educational use, including the additional 2,400 square feet of GFA.

III. Application Filed as a Modification of Consequence – Waiver Requested

Pursuant to 11-Z DCMR § 703.4, “[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.”

Pursuant to 11-Z DCMR § 703.6, “[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 requests a waiver pursuant to 11-Z DCMR § 101.9 for the Commission to review and process this application as a Modification of Consequence without a hearing.

11-Z DCMR § 101.9 provides the following:

“The Commission may, for good cause shown, waive any of the provisions of this subtitle 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 application complies with the standards of 11-Z DCMR § 101.9 as follows:

A. Good Cause Shown

Good cause is shown for permitting the proposed change in use to be processed as a Modification of Consequence. Eagle Academy provides an intimate school setting with small classroom sizes and extended learning opportunities designed to give students a thoughtful education that meets their specific needs. Eagle Academy currently has two campuses: one at 1017 New Jersey Avenue, SE (the “Capitol Riverfront Campus”) and one at 3400 Wheeler Road, SE (the “Ward 8 Campus”).

Eagle Academy originally opened in 2003 at the “Blue Castle” building at the northwest corner of 8th and M Streets, SE. At the time, Eagle Academy was the only public school serving the Navy Yard community. In 2008, Eagle Academy moved to its current location at the Capitol Riverfront Campus and has been operating there ever since. For the past three years Eagle Academy’s lease has been year-to-year due to the future redevelopment of that site, and was recently terminated. Eagle Academy is now required to vacate the building no later than June 15, 2020.

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, there is a critical need for Eagle Academy to remain open and grow to serve the existing and new families moving into the area.**

Prior to the lease termination, Eagle Academy was already searching for a more permanent campus within the Navy Yard/Buzzard Point area. Indeed, Ward 6 ANC commissioners and community stakeholders have been involved in the search process since 2015, given their stated desire to keep Eagle Academy in the neighborhood to serve children living in SE and SW. Eagle Academy pursued a variety of leases in a range of spaces, including new mixed-use development projects, existing historic buildings, temporary spaces in churches, ground floors of apartment buildings, etc. However, none were willing to seriously negotiate with Eagle Academy until the Applicant’s proposal to locate Eagle Academy at the Property. Moreover, Eagle Academy cannot

relocate its students to its Ward 8 Campus, which is already at capacity and cannot serve students who live in Ward 6.

The Property is the first and only location that is appropriate as an early childhood charter school, can provide a state-of-the-art brand new facility for Ward 6 students, and can become a long-term solution to keep Eagle Academy in the community. The location in Buzzard Point is adjacent to Eagle Academy's historic home in the Navy Yard and will be able to serve new and future residents of the surrounding neighborhoods.

Eagle Academy needs to reopen its doors in August, 2020 to begin the 2020 academic school year on time. To do so requires obtaining a building permit to renovate the interior of the building to deliver classrooms, workrooms, offices, and multipurpose rooms for educational uses, and obtaining a certificate of occupancy for public charter school use. Eagle Academy has already been approved by the Public Charter School Board and is approaching capacity for the 2020 school year. There are no other locations for Eagle Academy to educate its students. Opening at the Property in August 2020 is the only way for Eagle Academy to continue to serve its enrolled students and maintain stability for its families. If Eagle Academy does not open, its families will be scrambling to find schools with openings in other neighborhoods of the District, and Eagle Academy will be have to continue its failed prior attempts to find temporary space.

The only other schools in the immediate vicinity to Eagle Academy are the Van Ness Elementary School (located at 1150 5th Street, SE), which serves pre-kindergarten through 4th grade students, and the Amidon-Bowen Elementary School (located at 401 I Street, SW), which serves pre-kindergarten through 5th grade students. However, both schools are close to capacity in their current locations and cannot accommodate Eagle Academy's students. Moreover, Eagle Academy's proposed operations at the Property will not conflict with the two existing schools due to the rapidly increasing population, including families with children, in the Waterfront area.

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 to relocate in the surrounding neighborhood, it will either need to open late and process the request as a Modification of Significance, or otherwise obtain the requested waiver from the Zoning Commission to have the change in use be processed as a Modification of Consequence.

Therefore, based on the foregoing, there is good cause shown for the Zoning Commission 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.

B. No Prejudice to the Rights of Any Party

The waiver request will not prejudice the rights of any party. The only party to the underlying design review case was Advisory Neighborhood Commission ("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." A copy of the ANC's initial support letter is attached as Exhibit G.

The Applicant returned to the ANC at its February 3, 2020 administrative meeting to present the proposal for the change in use to the zoning orders. The Applicant is scheduled to present the subject application at the ANC's March 9, 2020 public meeting to obtain a formal vote, and will provide an update to the Commission upon doing so.

Therefore, given that the ANC will have weighed in on the request prior to the Zoning Commission taking any action, 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 move forward as a Modification of Consequence.

C. 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 Zoning Commission to "waive any of the provisions" of Subtitle Z. 11-Z DCMR § 101.9 (emphasis added). As clearly demonstrated herein, there is good cause to grant the waiver and doing so will not prejudice the rights of any party or is prohibited by law.

IV. Service on Affected Parties and Community Engagement

Pursuant to 11-Z DCMR § 703.13, the Applicant is required to formally serve a copy of the subject application on all parties to the original proceeding, including the affected ANC, at the same time that the request is filed with the Office of Zoning. The only party to the original proceeding was ANC 6D. As shown on the Certificate of Service attached hereto, the Applicant served the application on ANC 6D at the same time that it filed it with the Zoning Commission.

VI. Conclusion

The Applicant respectfully requests that the Commission waive the provisions of 11-Z DCMR §§ 703.5 and 703.6 and approve the proposed change in use as a Modification of Consequence without a hearing. As described herein, the Applicant has demonstrated good cause to grant the waiver and that doing so will not prejudice the rights of any party and is not otherwise prohibited by law. **However, if the Commission determines that the case is more appropriately processed as a Modification of Significance, then the Applicant respectfully requests that the Commission schedule the application for a public hearing at the next available hearing date.**

Respectfully submitted,

HOLLAND & KNIGHT LLP



Norman M. Glasgow, Jr.

Jessica R. Bloomfield

Enclosures

cc: Certificate of Service
Joel Lawson, D.C. Office of Planning (w/enclosures, via Email and Hand Delivery)
Elisa Vitale, D.C. Office of Planning (w/enclosures, via Email and Hand Delivery)
Anna Chamberlin, DDOT (w/enclosures, via Email)

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2020, copies of the foregoing application for a Modification of Consequence were served on the following via email, with hard copies sent on the following business day.

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