

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 16-09A**  
**Z.C. Case No. 16-09A**  
**1200 3<sup>rd</sup> Street, N.E., LLC**  
**(PUD Modification of Consequence @ Square 747, Lot 8)**  
**November 19, 2018**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on November 19, 2018. At that meeting, the Commission approved the application of 1200 3<sup>rd</sup> Street, LLC (“Applicant”) for a modification of consequence to Z.C. Order No. 16-09 (“Order”). The property that is the subject of this modification comprises Lot 8 in Square 747 (“Property”). The modification request was pursuant to § 703 of the Commission’s Rules of Practice and Procedure, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

As discussed below, no party, person, or entity appeared in opposition to the application at the public meeting or filed anything in the record. Accordingly, a decision by the Commission to grant this application would not be adverse to any party, and pursuant to 11-Z DCMR § 604.7, the Commission waives the requirements for findings of facts and conclusions of law. As set forth below, the Commission hereby approves the application.

**Application, Parties, and Public Meeting**

1. Pursuant to Chapter 24 of the 1958 Zoning Regulations, the Commission approved the design of a mixed-use project on the Property that includes residential, retail, and hotel uses (“Project”). This approval is reflected in Z.C. Order No. 16-09. (Exhibit [“Ex.”] 1B.)
2. On August 29, 2018, the Applicant submitted an application for a modification of consequence related to the materials approved for the hotel building as well as a modification of the approved parking plan. The Applicant included a set of plans depicting each of the following modifications: (Ex. 1, 1C.)
  - a. Hotel Materials: Two materials on the east façade of the hotel will be changed. The wood composite and formed metal panels will be replaced with glazed terra cotta tiles that will be embedded in precast panels to form a composite façade cladding assembly; and
  - b. Parking Plan: The parking plan is modified to provide compact spaces in clusters less than five spaces, as required pursuant to § 2115.4, and to allow standard spaces

that are nine feet by 18 feet in size rather than nine feet by 19 feet, as required by § 2115.1.

3. The Office of Planning (“OP”) submitted a report dated October 10, 2018, recommending approval of the modification of consequence as requested. OP supported the modifications as they were “relatively minor adjustment to materials of a similar quality and color.” It further supported the parking relief as the overall number of parking spaces was not being modified. (Ex. 5.)
4. Advisory Neighborhood Commission (“ANC”) 6C submitted a letter dated November 19, 2018, in support of the modifications, but noted a concern regarding a potential change in the location of the exterior door for the vehicular entry point opening onto M Street, N.E. (Ex. 6.) Because the Applicant did not include a request to modify the location of the exterior door of the garage in its application, the Commission did not consider such a request as part of this application.
5. The Commission, at its October 22, 2018 public meeting, determined that the application was properly a modification of consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, and that no public hearing was necessary pursuant Subtitle Z § 703.1. It noted that while the application requested additional relief from Subtitle Z §§ 2115.1 and 2115.4, it did not qualify as a modification of significance because holding a hearing on these issues would not be helpful. The Commission finds that the standard stated in Subtitle Z § 703.6 is flexible and the principal distinction between a modification of consequence and a modification of significance is whether a hearing would be helpful. Given that the record was complete, the rationale for the modification was sound and there was no opposition to the application, the Commission does not believe that a hearing would have been helpful on the application.
6. Upon determining that the application was properly before it as a modification of consequence, the Commission was then required by Subtitle Z § 703.17(c)(2) to establish a timeframe for the parties in the original proceeding to file a response in opposition to or in support of the request and for the Applicant to respond thereto; and schedule the request for deliberations. The ANC was the only party to the original proceeding, and its Single Member District representative indicated prior to the public meeting on October 22, 2018, that it had no objection to the modifications and that the ANC did not intend to take the matter up. The Commission noted that in the event the ANC changed its mind, it would be required to file its response no later than November 9, 2018. The Commission scheduled the request for deliberations for November 19, 2018.
7. As noted in Finding of Fact No. 4 above, the ANC opted to submit a letter in support of the modifications. The Commission accepted the letter into the record despite the fact that it was submitted on November 19, 2018.
8. No opposition to the modification application was filed in the record of this case.
9. The Commission, at its November 19, 2018 public meeting, voted to approve the modification of consequence.

Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized to make “modifications of consequence” to final orders and plans without a public hearing. A modification of consequence means a “modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance. (11-Z DCMR § 703.3.) Examples of modifications of consequence “include but are not limited to, a proposed change to a condition in 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.” (11-Z DCMR § 703.4.)

The Commission concludes that the refinement of plans and the request for additional relief, as described above, is a modification of consequence and therefore can be granted without a public hearing.

The Commission finds that the proposed modifications are entirely consistent with the Commission’s previous approval of the Project and the Order. The refinements are supported by OP and the affected ANC.

The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### **DECISION**

The Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a modification of consequence to the design review project approved in Z.C. Case No. 16-09. The conditions in Z.C. Order No. 16-09 remain unchanged except as follows (deletions noted by ~~striketrough~~, additions in **bold underline**):

1. The Project shall be built in accordance with the architectural drawings submitted into the record as Exhibit 22, as modified by Exhibits 37 and 46 **in the record for Case No. 16-09, as modified by the guidelines, conditions, and standards contained in Order No. 16-09, as amended by the architectural drawings submitted into the record as Exhibit 1C in Case No. 16-09A** and the guidelines, conditions, and standards herein (collectively, the “Plans”). The Plans will incorporate:
  - a. Approximately 6,000 square feet of space in the Metro plaza;
  - b. The Applicant will record an easement in the land records prior to the issuance of a residential certificate of occupancy for the northern building to provide public access to the Metro plaza and to accommodate a connection to a future pedestrian tunnel to the NOMA-Gallaudet U Metro station;
  - c. Approximately 3,000 square feet of space for the M Street plaza; and
  - d. Approximately 500 square feet of space for the Florida Avenue plaza.
2. The Project will have flexibility from the following zoning requirements:


- a. Section 411.4(c): special exception relief to allow a restaurant in the hotel penthouse;
- b. Section 411.9: relief to allow varying heights for the habitable penthouse space;
- c. Section 775.5: relief from the side yard requirement;
- d. Section 2115.9: relief to allow include valet parking spaces in the proposed parking supply;
- e. Section 2201.1: relief from the requirement to provide a 55-foot loading berth for the residential uses; ~~and~~
- f. Section 2605: The Applicant is exploring the potential for establishing the southern residential building as a condominium building. In the event it does so, it seeks flexibility to locate all of the affordable units available to households with an annual income no greater than 50% AMI in the northern (rental) residential building-;
- g. **Section 2115.1: relief to allow parking spaces that are nine feet by 18 feet in size; and**
- h. **Section 2115.4: relief from the requirement that compact parking spaces be provided in clusters of at least five spaces.**


On November 19, 2018, upon the motion of Commissioner Shapiro, as seconded by Commissioner Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become effective upon publication in the *D.C. Register*; that is on January 18, 2019.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

  
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**ANTHONY J. HOOD**  
CHAIRMAN  
ZONING COMMISSION

  
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**SARA A. BARDIN**  
DIRECTOR  
OFFICE OF ZONING