

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 79-19A**  
**Z.C. Case No. 79-19A/78-07**  
**BDC Van Ness, LLC**  
**(PUD Modification of Consequence @ Square 2047, Lot 1)**  
**July 30, 2018**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on July 30, 2018. At that meeting, the Commission approved the application of BDC Van Ness, LLC (“Applicant”) for a modification of consequence to an approved planned unit development (“PUD”) for property located at 4250 Connecticut Avenue, N.W. (Square 2047, Lot 1) (“PUD Site”). The modification request was made pursuant to Subtitle Z § 703 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

**FINDINGS OF FACT**

**BACKGROUND INFORMATION**

1. The PUD Site is located in the northwest quadrant of the District and is bounded by Windom Place to the north, Connecticut Avenue to the east, Veazey Terrace to the south, and the University of the District of Columbia (“UDC”) to the west. The Van Ness-UDC Metrorail station is located adjacent to the PUD Site at the northwest corner of Connecticut Avenue and Veazey Terrace.
2. The PUD Site is generally shaped as a parallelogram, with the majority of its frontage located along the west side of Connecticut Avenue, N.W. The PUD Site has a land area of approximately 65,601 square feet and is improved with an office building that was constructed in 1981 pursuant to Z.C. Order No. 318. The PUD Site is zoned MU-7 (C-3-A under the 1958 Zoning Regulations which were in effect at the time that the PUD was approved).
3. Pursuant to Z.C. Order No. 245, dated December 14, 1978, and effective on December 15, 1978, the Commission approved an application filed by the Washington Metropolitan Area Transit Authority (“WMATA”) for a preliminary PUD at the PUD Site. At the time, the PUD Site was owned and utilized by WMATA as a staging area for construction of the Metrorail system, and had been acquired by WMATA to accommodate the west entrance to the Van Ness-UDC Metrorail Station, 25 “kiss n ride” parking spaces, and five off-street bus bays. (See Z.C. Order No. 245, Findings of Fact (“FF”) No. 7 and Z.C. Order No. 318,

FF Nos. 7-8.) The preliminary project approved in Z.C. Order No. 245 was for a “commercial retail/office development under, over, and adjacent to the west entrance of the Van Ness-UDC Metro Station” with 40,000 square feet of retail space, eight floors of office space, and two subgrade levels of parking. (See Z.C. Order No. 245 at FF Nos. 8-9.) WMATA’s intent was to develop the project over the Metrorail facilities by means of a long-term lease.

4. Pursuant to Z.C. Order No. 318, dated July 10, 1980, and effective on July 18, 1980, the Commission approved an application filed jointly by WMATA and Prudential Insurance Company of America to construct a new multi-story office, retail, and commercial structure on the PUD Site, incorporating Metrorail, Metrobus, and the kiss n ride transit facilities. The project was approved to have 40,919 square feet of rentable retail commercial space on the first two floors and the first below-grade level, and 162,359 square feet of rentable office space on the five top floors. (See Z.C. Order No. 318, FF. Nos. 9-10.) The project was approved to have a maximum density of 3.5 floor area ratio (“FAR”) and a maximum building height of 38 feet, six inches (three stories) on the southern portion of the building and 78 feet, six inches (seven stories) on the northern portion of the building. (*Id.* at Decision Nos. 4 and 6.) The approved massing was intended to provide an effective and attractive transition from the proposed three-story plaza level to the five-, six-, and seven-story buildings along Connecticut Avenue. (*Id.* at FF. No. 11(c).) In addition, the Commission approved a lot occupancy of 65%, 252 parking spaces (including 27 vault spaces), and three loading berths. (*Id.* at FF. No. 11(d)-(f) and Decision Nos. 7-9.)

## **MODIFICATION OF CONSEQUENCE**

5. By letter dated May 4, 2018 (Exhibit [“Ex.”] 1), and pursuant to 11-Z DCMR § 703, the Applicant submitted a request for a Modification of Consequence to modernize and upgrade the existing building’s façade, replace and improve exterior elements, and introduce internal re-programming within the building’s garage. As shown on the architectural drawings included with the application (“Architectural Drawings”), the Applicant proposed to infill the existing retail arcade along Connecticut Avenue, push out the retail storefront glazing, replace the fabric retail awnings with a new solid spandrel, and infill the existing third-story arcade at the building entry. (Ex. 1F.) On the upper floors, the Applicant proposed to replace the existing glass panels to match the new retail storefront and create outdoor terraces for building tenants.
6. In addition, the Applicant proposed to expand the PUD Site’s existing courtyard; upgrade the courtyard landscaping with new planters, trees, and vegetation; and enlarge the building’s entrance into the courtyard. Renovations to the courtyard would also include removing the existing vacant retail and storage spaces and exterior stair. The Applicant also proposed to replace the existing retaining wall and planters at the entry plaza on the south side of the PUD Site with a lower, landscaped planter, and replace the mezzanine level in this location with low planters to provide seating and soften the landscape. The rear of the PUD Site would be fully landscaped and all existing paving within the property line would be replaced with a new smaller-scale paver.

7. The building's intermediate parking level, which is currently inaccessible from the building's main parking level, would remain, but the Applicant proposed to introduce openings into the existing walls that separate this intermediate level from the adjacent building parking. A new elevator lobby would also be constructed to serve the combined parking level.
8. Based on the foregoing, the Applicant requested to modify the language of Decision Nos. 2 and 11 of Z.C. Order No. 318, which relate to the architectural and landscape drawings approved in the original PUD. Decision Nos. 2 and 11 state the following in relevant part:
  2. The planned unit development shall be developed in accordance with the revised plans filed with the Zoning Commission, dated May 19, 1980, prepared by HartmanCox Architects and marked as Exhibit No. 42 of the record, as modified by drawings marked as Exhibit No. 64 of the record, except as those plans may be modified to conform to the guidelines, conditions and standards of this order.
  11. Landscaping shall be provided as shown on the landscape plan, marked as Exhibits No. 45 and Sheets 6 and 26 of Exhibit No. 42, as modified by sheets 1 (C1) and 1 (C2) of Exhibit No. 65... In addition, the design of the planter on the fourth floor terrace shall be as shown on sheet 1 (A1) of Exhibit No. 65.
9. The Applicant requested to modify the above-quoted language to reference updated architectural and landscape plans submitted in this modification application as follows:
  2. The planned unit development shall be developed in accordance with the revised plans filed with the Zoning Commission, dated May 19, 1980, prepared by HartmanCox Architects and marked as Exhibit No. 42 of the record, as modified by drawings marked as Exhibit No. 64 of the record, and as further modified by the revised plans filed with the Zoning Commission, dated May 1, 2018, prepared by Perkins +Will Architects and marked as Exhibit No. 1F1-1F2 of the record in Z.C. Case No. 79-19A/78-07, as modified by the revised plans dated June 20, 2018 and marked as Exhibit No. 5A of the record in Z.C. Case No. 79-19A/78-07, except as those plans may be modified to conform to the guidelines, conditions and standards of this order.
  11. Landscaping shall be provided as shown on the landscape plan, marked as Exhibits No. 45 and Sheets 6 and 26 of Exhibit No. 42, as modified by sheets 1 (C1) and 1 (C2) of Exhibit No. 65... In addition, the design of the planter on the fourth floor terrace shall be as shown on sheet 1 (A1) of Exhibit No. 65. Landscaping shall be provided as further modified and revised as shown on the landscape plans included in the plans dated May 1, 2018, prepared by Perkins +Will Architects and marked as Exhibit No. 1F1-1F2 of the record in Z.C. Case No. 79-19A/78-07.

10. In satisfaction of 11-Z DCMR § 703.13, the Applicant provided a Certificate of Service (Ex. 1, p. 7) which noted that Advisory Neighborhood Commission (“ANC”) 3F and the Forest Hills Neighborhood Association, the only parties to the original proceeding, were served with the application.
11. On June 1, 2018, the Office of Planning (“OP”) submitted a report (Ex. 4) recommending that the Commission approve the application, including the revised language to Decision Nos. 2 and 11. In its report, OP found that the proposed modifications were properly considered as a modification of consequence because the application sought to modify a condition of the final order and the approved project’s architectural elements and open spaces, and would not increase the FAR of the building or make any other change that would increase the intensity of the building. (See OP Report, pp. 3, 6-7.) OP also found that the proposed changes to the building would be consistent with the Comprehensive Plan, the Van Ness Commercial District Action Strategy, and Shades of Green: Green Infrastructure and Pavement Removal Strategy. (See OP Report, p. 5.)
12. At the Commission’s June 11, 2018, public meeting, the Commission determined that the application was properly submitted as a Modification of Consequence within the meaning of 11-Z DCMR §§ 703.3 and 703.4, and that no public hearing was necessary pursuant to 11-Z DCMR § 703.1. The Commission was therefore required by 11-Z DCMR § 703.17(c)(2) to establish a timeframe for the parties to file a response in opposition to or in support of the request, and for the Applicant to respond thereto; and to schedule the application for deliberations.
13. On June 20, 2018, the Applicant submitted a letter and corresponding architectural drawings requesting the following modifications to the application based on feedback from the community: (i) that the 25 existing kiss n ride parking spaces in the existing building’s garage be converted to retail and office parking spaces for the building; (ii) that a portion of the existing bus lane on the eastern portion of the PUD Site be utilized for up to four new kiss n ride parking spaces; and (iii) that Condition No. 10 of Z.C. Order No. 318 relating to the construction of a pedestrian bridge that was never built be removed. (Ex. 5, 5A.) The Applicant’s letter noted that the kiss n ride parking spaces and the bus lane are owned and controlled by WMATA, and therefore requested flexibility to maintain the kiss n ride parking level and bus lane in their current conditions if WMATA does not formally agree to the proposed modifications.
14. On June 21, 2018, ANC 3F submitted a resolution to the record stating that at its regularly scheduled and duly noticed meeting of June 19, 2018, with a quorum of commissioners and the public present, ANC 3F voted unanimously (5-0-0) to support the application. The revised proposal included in the Applicant’s June 20, 2018 submission was presented to the ANC at its June 19, 2018 meeting and the ANC supported those changes to the application. The ANC’s support was conditioned on the following recommendations:
  - a. ANC 3F recommended that the Commission include in its findings and order that the Applicant request that WMATA allow at least four kiss n ride parking spaces on the ground-level bus lane on the west side of the property at ground level;

- b. ANC 3F recommended that the Commission include in its findings and order that the Applicant request that WMATA allow the conversion of the existing kiss n ride level into retail parking;
  - c. ANC 3F recommended that the Commission includes in its findings and order that the Applicant work with ANC 3F and Van Ness Main Street, and other interested organizations, to ensure appropriate plantings and maintenance be performed on the street-side tree boxes adjacent to the project;
  - d. ANC 3F recommended that the Commission include in its findings and order that the Applicant seek DDOT input and advice about the suitability of the extensive public space curb cut on the north end of the property and, in addition, consult with ANC 3F and other interested parties in addressing the aesthetic and public safety concerns associated with the loading dock area; and
  - e. ANC 3F recommended that the pedestrian bridge provisions be deleted.
15. At its June 25, 2018 public meeting, the Commission reviewed the application and decided to postpone its decision on the case to allow OP and Forest Hills to respond to the Applicant's June 20, 2018 submission.
16. On July 2, 2018, OP submitted a supplemental report indicating its support for the modifications to the application included in the Applicant's June 20, 2018 submission (conversion of the existing kiss n ride parking spaces to retail and office parking spaces; conversion of the bus lane to up to four kiss n ride spaces; and removal of Condition No. 10 of Z.C. Order No. 318). (Ex. 6.) OP noted in its supplemental report that it had shared the proposed changes with the District Department of Transportation ("DDOT") which expressed no concern with the requests.
17. Despite receiving notice of the modifications, Forest Hills did not submit a response to the Applicant's June 20, 2018 submission. However, a letter of support for the modification of consequence application from Forest Hills was included in the record at Exhibit 1H.
18. At its July 30, 2018, public meeting, the Commission reviewed OP's supplemental report and deliberated on the overall application. The Commission found that none of the proposed modifications impact the use, proffered public benefits and amenities, or required covenants, and do not create any additional relief or flexibility from the Zoning Regulations not previously approved. Therefore, the Commission voted to approve the Applicant's request for a modification of consequence.

### **CONCLUSIONS OF LAW**

1. 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 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.” (11-Z DCMR § 703.4.)

2. The Commission concludes that the modifications described in this Order and shown on the architectural drawings included at Exhibit 1F, as supplemented by Exhibit 5A, are modifications of consequence and therefore can be granted without a public hearing.
3. The Commission concludes that the proposed modifications are entirely consistent with the Commission’s previous approval of the project. The Applicant only proposes the redesign and relocation of architectural elements of the Existing Building that do not diminish or detract from the Commission’s original approval.
4. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A)(2012 Repl.) to give “great weight” to the issues and concerns contained in the written report of the affected ANC. In this case, ANC 3F submitted a report stating its unanimous (5-0-0) vote in support of the modification application subject to the conditions recommended above in Finding of Fact No. 14 of this Order. The ANC recommended that the Applicant request for WMATA to allow at least four kiss n ride parking spaces on the ground level bus lane on the west side of the property at the ground level, and allow the conversion of the existing kiss n ride parking level into retail parking. The ANC also recommended that the Applicant work with it and other interested organizations to ensure that appropriate plantings are installed and maintained on the street-side tree boxes adjacent to the PUD site and to address the aesthetic and public safety concerns of the loading dock area. Finally, the ANC recommended that the Applicant seek DDOT input about the suitability of the extensive public space curb cut on the north end of the PUD site. The Commission does not find any of the conditions recommended by the ANC to be legally relevant to this modification application.<sup>1</sup> Nevertheless, the Applicant agreed to the conditions and they are included in the Decision section of this Order.
5. The Commission is required under § 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 (2001)), to give great weight to OP’s recommendations. The Commission has carefully considered OP’s recommendation in support of the application and agrees that approval of the requested modification of consequence should be granted.

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<sup>1</sup> The conditions recommended by ANC 3F would not typically be adopted in a Commission order because they involve the Applicant’s First Amendment right to associate with others, and they do not mitigate any adverse impacts associated with the modification requested. Further, this modification application made no request for zoning flexibility; therefore, the Applicant did not proffer any new public benefits and project amenities for the Commission to evaluate and then impose conditions to enforce. Accordingly, the ANC’s proposed conditions are not legally relevant to the application, but the Applicant agreed to the conditions and the Commission consents to their inclusion in the Order.

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

### DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for a modification of consequence to the approved PUD located at 4250 Connecticut Avenue, N.W. (Square 2047, Lot 1), subject to the architectural drawings at Exhibit 1F, as supplemented by the architectural drawings at Exhibit 5A. Condition Nos. 2 and 11 of Z.C. Order No. 318 shall be revised as follows:

2. The planned unit development shall be developed in accordance with the revised plans filed with the Zoning Commission, dated May 19, 1980, prepared by HartmanCox, Architects and marked as Exhibit No. 42 of the record, as modified by drawings marked as Exhibit No. 64 of the record, and as further modified by the revised plans filed with the Zoning Commission, dated May 1, 2018, prepared by Perkins + Will Architects and marked as Exhibit No. 1F1-1F2 of the record in Z.C. Case No. 79-19A/78-07, as modified by the revised plans dated June 20, 2018 and marked as Exhibit No. 5A of the record in Z.C. Case No. 79-19A/78-07, except as those plans may be modified to conform to the guidelines, conditions and standards of this order.
11. Landscaping shall be provided as shown on the landscape plan, marked as Exhibits No. 45 and Sheets 6 and 26 of Exhibit No. 42, as modified by sheets 1 (C1) and 1 (C2) of Exhibit No. 65. In addition, the applicant shall substitute for the red oak located between the loading dock and the parking garage entrance, a tree of columnar shape to allow trucks to pass under the tree without damaging the branches. In addition, the design of the planter on the fourth floor terrace shall be as shown on sheet 1 (A1) of Exhibit No. 65. Landscaping shall be provided as further modified and revised as shown on the landscape plans included in the plans dated May 1, 2018, prepared by Perkins + Will Architects and marked as Exhibit No. 1F1-1F2 of the record in Z.C. Case No. 79-19A/78-07.

In addition, Condition No. 10 of Z.C. Order No. 318 shall be deleted:

- ~~10. The applicant shall construct a pedestrian bridge, which shall be a minimum of ten feet wide, connecting the pedestrian plaza adjacent to the Student Center and Engineering buildings of the University campus with the fourth floor terrace of the building, generally as shown on sheet 8 of Exhibit No. 42 of the record.~~

The Commission's approval is subject to the following conditions, as requested by ANC 3F and agreed to by the Applicant:

1. The Applicant shall request that WMATA allow at least four kiss n ride parking spaces on the ground-level bus lane on the west side of the PUD Site at ground level;

2. The Applicant shall request that WMATA allow the conversion of the existing kiss n ride parking level into retail parking;
3. The Applicant shall work with ANC 3F, Van Ness Main Street, and other interested organizations to ensure appropriate plantings are installed and maintenance is performed on the street-side tree boxes adjacent to the PUD Site; and
4. The Applicant shall seek DDOT input and advice about the suitability of the extensive public space curb cut on the north end of the PUD Site and consult with ANC 3F and other interested parties in addressing the aesthetic and public safety concerns associated with the loading dock area.


The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. 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, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.


On July 30, 2018, upon the motion of Commissioner Shapiro, as seconded by Commissioner Turnbull, 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 final and effective upon publication in the *DC Register*; that is on October 12, 2018.

**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