

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-15A
Z.C. Case No. 15-15A
JBG/Boundary 1500 Harry Thomas Way, LLC and
JBG/Boundary Eckington Place, LLC
(Modification of Consequence of Consolidated PUD @ Square 3576, Lot 57¹)
September 17, 2018**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held public meetings on July 30, 2018, and on September 17, 2018. At the September 17, 2018 meeting, the Commission approved the application of JBG/Boundary 1500 Harry Thomas Way, LLC and JBG/Boundary Eckington Place, LLC (collectively, “Applicant”) for a modification of consequence of the consolidated PUD application approved by Z.C. Order No. 15-15. The property (Lot 57 in Square 3576) that is the subject of this application is bounded by rowhouses, a vacant lot, and a self-storage facility to the north, Eckington Place, N.E. to the west, a multi-family property to the south, and Harry Thomas Way, N.E. to the east (“Property”). The modification request was made pursuant to § 703 of the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. The Commission approved the PUD in 2016 by Z.C. Order No. 15-15. The Property consists of approximately 135,099 square feet of land area. Z.C. Order No. 15-15 approved a consolidated PUD and a related Zoning Map amendment for the Property from M to CR, under the 1958 Zoning Regulations then in effect, to allow construction of a mixed-use development consisting of four structures containing residential units, ground-floor commercial uses, and underground parking. The PUD project will have an overall density of up to 5.2 floor area ratio (“FAR”), including up to approximately 695 residential units, and up to approximately 77,184 gross square feet of commercial, retail, and service uses (“Project”).

¹ Lot 57 was consolidated into one record lot from Lots 814 and 2001-2008 (formerly Lot 805) in Square 3576.

2. The Commission, at its July 30, 2018 public meeting², determined that the application qualified as a modification of consequence under Subtitle Z § 703 of the Zoning Regulations, and that no public hearing was necessary pursuant to Subtitle Z § 703.1. The Commission therefore, pursuant to Subtitle Z § 703.17(c)(2), established a timeframe for additional filings and for the Commission’s deliberations on the merits of the application and for the submission of comments by the parties, if any.

CURRENT APPLICATION

3. The modification proposed by this application revises the design of the south façade of the Project’s southeast structure (“Southeast Structure”) to enclose the rear open corridors and balconies for the first five floors of the building. The modification is requested in order for the Southeast Structure to comply with the Fire Code (Subtitle H of Title 12, DCMR), which requires 10 feet of separation from exterior egress balconies, accessways, and stairs to the nearest lot line. The Southeast Structure, as designed, provides a zero lot line condition and, thus, cannot accommodate the code-required separation. Accordingly, a modification is required. (Exhibits [“Ex.”] 1, 1C, 12, 13A1, 13A2.)
4. The new proposed south wall of the Southeast Structure will be located along the property line and will include fenestration to ensure the availability of light, articulate the façade, break down the mass of the building, and achieve an overall aesthetic in keeping with the Project’s original design scheme. The proposed wall will be composed of cementitious siding painted with lighter brown and grey hues to enhance ambient light between the Southeast Structure and The Gale building immediately to the south. (Ex. 1, 12, 13A1, 13A2.)
5. As outlined in the Applicant’s submissions, enclosing the rear corridors and balconies of the Southeast Structure will enhance the privacy of the residents of The Gale building, which is approximately six feet from the shared lot line. The residential units in the Southeast Structure front onto the woonerf to the north of the building and face The Gale development to the south, with unit entrances on the south side on the corridor levels (Floors 1, 3, and 5). The previously approved design would externalize traffic to and from unit entrances along the unenclosed south corridors. In addition, the previous design included balconies facing south towards The Gale on Floors 2 and 4. Both the unenclosed corridors and balconies would offer direct views into certain windows of The Gale building. Enclosing the corridors and replacing the balconies with internal unit space mitigates the privacy impact of the previously approved design on The Gale units. This modification also enhances privacy for the residents of the Southeast Structure who, under the proposed design, are able to access their units without being viewable outside of their own corridors, in addition to providing protection from the elements. (Ex. 12, 13A2.)

² The application was originally scheduled for initial consideration at the Commission’s public meeting on June 11, 2018, but was rescheduled to July 30, 2018, at the Applicant’s request.

6. In addition, the proposed modification also increases the second-floor living space for units on Floors 1-2 and 3-4 of the Southeast Structure by enclosing the balconies on Floors 2 and 4. Because these units face onto the woonerf to the north, with either outdoor patio or balcony space facing the woonerf, replacing the southern balconies with enclosed living space will provide the benefits described above, while still maintaining outdoor recreation space for residents. (Ex. 12, 13A2.)
7. Any impact from the proposed modification on light and air available to The Gale building will be minimal, as the footprint of the Southeast Structure will remain the same as originally proposed, with the only difference being the enclosure of the corridor and balcony space on the first five floors. Further, eliminating the corridor and balcony overhangs may, in fact, improve ambient light between the buildings by allowing the wall to reflect light entering that space, rather than light being captured and lost to the shadows of the overhangs. (Ex. 1, 12, 13A1, 13A2.)
8. As noted above, the only other party to the original PUD approval was ANC 5E. In satisfaction of Subtitle Z § 703.13, the Applicant provided a Certificate of Service which noted that ANC 5E was served with the application. (Ex. 1.) ANC 5E did not submit any comments into the record regarding the requested modification.
9. OP submitted a report on July 24, 2018, recommending that the Commission consider the application as a modification of consequence. (Ex. 14.) OP concluded that the proposed modification is not likely to have a significant impact on the appearance of the structure from the public way and that the proposed design would provide greater privacy for residents of The Gale building to the south than would the previously approved design.

CONCLUSIONS OF LAW

Pursuant to Subtitle Z § 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 is “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.” (11 DCMR Subtitle Z § 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.” (*Id.* § 703.4.)

The Commission concludes that the modifications requested in the subject application and depicted in the plans submitted as Exhibit 1C, 13A1, and 13A2 are modifications of consequence and, therefore, can be granted without a public hearing. The Commission finds that the proposed modifications constitute a redesign of architectural elements under Subtitle Z § 703.4 and are entirely consistent with the Commission’s previous approval of the PUD. The use of the Property has not changed, and the Applicant is only proposing a redesign of architectural elements of the

building that do not diminish or detract from the Commission's original approval of the Project as a result of Fire Code requirements.

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 an affected ANC. In this case, ANC 5E did not submit comments into the record regarding the requested modification. The Commission is also required to give great weight to OP's recommendations under D.C. Official Code § 6-623.04 (2012 Repl.). The Commission concurs with OP's recommendation that the application be considered as a modification of consequence application. 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 a modification of consequence to the consolidated PUD project approved in Z.C. Order No. 15-15. The conditions in the approved PUD remain unchanged, except as follows. Condition No. 1 of Z.C. Order No. 15-15 is revised to read as follows:


1. The Project shall be developed in accordance with the architectural plans and drawings submitted on July 5, 2016 (Exhibit 51A for Case No. 15-15), as modified by the plans submitted on May 11, 2018 (Exhibit 1C for Case No. 15-15A) and on July 24, 2018 (Exhibits 13A1 and 13A2 for Case No. 15-15A), and as modified by the guidelines, conditions, and standards herein (collectively, the "Plans").

On September 17, 2018, upon the motion of Commissioner Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter A. Shapiro, not present, not voting).


In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order shall become final and 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.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING