

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 20-34A
Z.C. Case No. 20-34A
CP VII Cotton Annex, LLC
(Modification of Consequence of Mandatory Special Exception Review
in the D-8 Zone @ Lot 806 in Square 326 (300 12th Street, S.W.))
January 27, 2022

Pursuant to notice, at its January 27, 2022 public meeting, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of CP VII Cotton Annex, LLC (“Applicant”) for a Modification of Consequence to revise Conditions A.1. and A.2. of Z.C. Order No. 20-34 (“Original Order”) for Lot 806 in Square 326, with a street address of 300 12th Street, S.W. (“Property”). 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 (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 APPROVALS

1. Pursuant to the Original Order, effective May 28, 2021, the Commission approved, subject to enumerated conditions, a mandatory special exception review in the D-8 zone and two variances to permit the renovation of the historically designated Cotton Annex building and construction of an addition to create a residential building with ground-floor retail, underground parking, and associated site improvements at the Property (“Project”).

PARTIES AND NOTICE

2. The only party to the Original Order other than the Applicant was Advisory Neighborhood Commission (“ANC”) 6D, the “affected” ANC pursuant to Subtitle Z § 101.8.
3. The Applicant served the Application no later than December 21, 2021 on ANC 6D as well as the D.C. Office of Planning (“OP”) as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 3.)

THE APPLICATION

4. On December 21, 2021, the Applicant filed the Application requesting a Modification of Consequence to authorize modifications to the conditions approved by the Original Order

to permit (1) a reduction in the number of residential units in the Project from 610 to 594, with a range of plus or minus five percent; and (2) flexibility to achieve a LEED Gold certification for the Project using either the LEED For Home V4 Multifamily Mid-Rise (“LEED HMM”) or the LEED For New Construction (“LEED NC”) rating systems. (Ex. 3.)

5. The Applicant explained that it realized that retaining the Original Order’s current minimum residential unit count would result in many of the Project’s units being “small, oddly configured, and [having] limited windows” because of the need to preserve the historic Cotton Annex building on the Property. Therefore, the Applicant was requesting a decrease in the required number of residential units, which would allow for larger units with a better “quality of life scale.” The Applicant stated that the requested modification to the number of residential units would only affect the interior configuration of the Project and would not otherwise change any other aspect of the Project’s plans as approved by the Original Order. In addition, the amount of floor area devoted to Inclusionary Zoning (IZ) units in the Project would not change as a result of the proposed modification. (Ex. 3.)
6. The Applicant also explained that the Project would benefit from greater flexibility in achieving its LEED Gold certification using either the LEED HMM rating system or the LEED NC rating system, which the Applicant stated offers more stringent standards than LEED HMM in certain respects. (Ex. 3.)

RESPONSES TO THE APPLICATION

7. OP submitted a report dated January 5, 2022 (“OP Report”), stating no objection to the Application being considered a Modification of Consequence and recommending approval of the Application. (Ex. 7.)
8. OP observed that the requested modifications would result in fewer but larger residential units and would not result in any changes to the uses or exterior design of the Project. Therefore, the Project would continue to conform with the special exception criteria and variances granted in the Original Order. In addition, OP noted that the Project would continue to meet IZ requirements and achieve LEED Gold certification. (Ex. 7.)
9. OP requested that the Applicant provide estimates of the number and types of IZ units that would result from approval of the requested modifications as well as revise its existing drawings showing the distribution of the IZ units.¹ (Ex. 7.)
10. OP noted that in conversations with staff at the Department of Energy & Environment (“DOEE”), DOEE expressed a preference for using the LEED HMM rating system to achieve the Project’s LEED Gold certification. The comments of DOEE’s staff were attached to the OP Report, which noted that DOEE did not agree with the Applicant’s

¹ The Commission clarified at its January 13, 2022 public meeting, that information about the IZ units did not necessarily need to be considered in a modification of a design review application. (Transcript [“Tr.”] from January 13, 2022 meeting, at pp. 13-14.) However, the Commission stated it did not object to seeing such information about the IZ units if the Applicant wished to provide it, which it did in its supplemental statement filed at Exhibits 8 and 8A.

assertion that LEED NC is more stringent than LEED HMM. DOEE's comments indicated that LEED HMM requires various inspections and performance tests which benefit tenants. Moreover, DOEE's comments stated that LEED's rating system encourages the use of specialized rating systems when available and that, in this case, LEED HMM was specifically designed for the Project's building type. DOEE's comments also pointed out that LEED HMM includes requirements specifically aimed at educating residential tenants about their units and improving their comfort and wellbeing. (Ex. 7.)

11. At its January 13, 2022 public meeting, the Commission asked the Applicant to submit its responses to OP's requests for information as well as the comments from DOEE in the OP Report. The Commission scheduled the case for further deliberation and allowed additional time for ANC 6D to file a response to the Application. (Tr. from January 13, 2022 meeting at pp. 11-15.)
12. ANC 6D did not submit a response to the Application and did not participate in this case.

APPLICANT'S SUPPLEMENTAL STATEMENT

13. The Applicant submitted a supplemental statement dated January 19, 2022 ("Applicant's Supplemental Statement"), which included as Exhibit A revised floorplans showing the estimated number of IZ units, the estimated IZ unit types, and the estimated IZ unit distributions with the proposed reduction in the number of residential units. (Ex. 8, 8A.)
14. The Applicant's Supplemental Statement also addressed DOEE's comments in the OP Report and explained that the Applicant believes it will be difficult to achieve a LEED Gold certification using the LEED HMM rating system because it is required to retain and rehabilitate the historic windows of the Cotton Annex building as part of the Commission of Fine Arts concept approval for the Project. Specifically, the LEED HMM rating system includes an "Environmental Quality Compartmentalization Prerequisite" which requires demonstration of acceptable sealing and air leakage through a blower door test. However, the Applicant stated that the existing historic windows have perimeter gaps that cannot be changed, which will likely result in failure of the blower door test and an inability to satisfy the LEED HMM rating system's standards for a LEED Gold certification. (Ex. 8, 8B, 8C.)
15. To accommodate DOEE's preference for the LEED HMM rating system, the Applicant's Supplemental Statement included a revised request to modify Condition A.2. of the Original Order. Instead of its initial modification request to meet the threshold for designation as LEED Gold pursuant to either the LEED HMM standard or the LEED NC standard, the Applicant revised its modification request to agree to meet the designation as LEED Gold pursuant to the LEED HMM standard. However, if the Project cannot pass the blower door test, then the Project shall be designed to meet the LEED NC standards. (Ex. 8.)
16. At its January 27, 2022 public meeting, the Commission reviewed the Applicant's responses and indicated it was satisfied with the Applicant's revisions to its proposed modification of Condition A.2. (Tr. from January 27, 2022 meeting at pp. 8-11.)

CONCLUSIONS OF LAW

1. 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.
2. 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.”
3. Subtitle Z § 703.4 includes “a proposed change to a condition in the final order” as an example of a Modification of Consequence.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANC 6D.
5. The Commission concludes that the Application qualifies as a Modification of Consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify the conditions approved by the Original Order, and therefore the modification can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission concludes that the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties has been met, and therefore the Commission could consider the merits of the Application at its January 27, 2022 public meeting.
7. The Commission finds that the Application is consistent with the Original Order, because the requested modifications only change the conditions of the Original Order to allow the Project to provide fewer but higher quality units and greater flexibility to attain a LEED Gold certification while preserving the historic features of the Cotton Annex building without resulting in any other changes to the uses or exterior design of the Project.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

8. The Commission must give “great weight” to the recommendations of the OP pursuant to § 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 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
9. The Commission notes OP’s lack of objection to the Application being considered as a Modification of Consequence and finds persuasive OP’s recommendation that the Commission approve the Application and therefore concurs in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

10. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting 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.)

and Subtitle Z § 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 (D.C. 1978) (citation omitted).)

11. Since ANC 6D did not file a written report in response to the Application, there is nothing to which the Commission can give great weight.

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 Application’s request for a Modification of Consequence to modify Conditions A.1. and A.2. of Z.C. Order No. 20-34 subject to the following conditions and provisions:

The conditions in Z.C. Order No. 20-34 remain unchanged and in effect, except that Conditions A.1. and A.2. as incorporated in Z.C. Order No. 20-34, are hereby revised to read as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions in **bold** and underlined text):

- A.1. The Project shall be built in accordance with the architectural plans and elevations dated February 25, 2021, and marked as Exhibit 11A (the “Approved Plans”), subject to the following design flexibility from the Approved Plans:

...

- Number of Units: To provide a range in the total square footage of residential dwelling units and the approved number of residential dwelling units of **564** plus or minus five percent; . . .

- A.2. The Project shall be designed to meet the threshold for designation as LEED Gold pursuant to the LEED For Home V4 Multifamily Mid-Rise standards. **However, if the Project cannot pass the required blower door test, then the Project shall be designed to meet the LEED For New Construction standards.** The Applicant will pursue certification for the Project at the LEED Gold level. . . .

Vote (January 27, 2022): 5-0-0 (Robert E. Miller, Peter A. Shapiro, Anthony J. Hood, Peter G. May, and Joseph S. Imamura to approve).

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 20-34A shall become final and effective upon publication in the *D.C. Register*; that is, on April 8, 2022.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.