

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 01-01C
Z.C. Case No. 01-01C
BP/CRF 901 New York Avenue, LLC
(Modification of Consequence of Consolidated PUD and
Map Amendment @ Square 372, Lot 34)
February 29, 2024

Pursuant to notice, at its public meeting on February 29, 2024, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of BP/CRF 901 New York Avenue, LLC (the “Applicant”) for a Modification of Consequence of the consolidated planned unit development (“PUD”) approved in Z.C. Case No. 01-01A/01-01MM/99-6M/88-16C, first approved in Z.C. Order No. 629 and most recently modified in Z.C. Order No. 01-01B (the “Approved PUD”), for Lot 34 in Square 372 (the “Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedure, 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

I. BACKGROUND

Prior Approvals

1. The Property occupies the entirety of Square 372, which is bounded by New York Avenue, N.W. to the south, 10th Street, N.W. to the west, K Street, N.W. to the north, and 9th Street, N.W. to the east. The eastern corner of the Property faces Mount Vernon Square. The Property consists of approximately 53,252 square feet of land area and is improved with an 11-story office building (the “Building”).
2. The Approved PUD was first approved for the Property by Z.C. Order No. 629 for Case No. 88-16C, and extensions were granted by Z.C. Orders No. 629A through 629F. The Approved PUD was subsequently modified and a related Zoning Map amendment added by Z.C. Order No. 920 for Case No. 99-6M/88-16C. A Minor Modification was approved by Z.C. Order No. 920-A for Case No. 01-01MM/99-6M/88-16C. More recently, in 2018 Z.C. Order No. 01-01A approved a Modification of Consequence for revisions to the Building entrances along New York Avenue and K Street, N.W. and in 2019 Z.C. Order

No. 01-01B approved a Modification of Consequence for modified design parameters for the ground-floor commercial storefronts and the Building’s signage.

Parties and Notice

3. Advisory Neighborhood Commission (“ANC”) 2C, in which the Property is located, is the “affected ANC” and automatically party to the Application. Aside from the affected ANC, there were no other parties to the original proceedings for the Approved PUD.
4. On January 26, 2024, the Applicant served the Application on ANC 2C, as well as the Office of Planning (“OP”) and District Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2¹ at 6.)

II. THE APPLICATION

5. On January 26, 2024, the Applicant filed the Application requesting a Modification of Consequence to the Approved PUD in order to revise the Building as follows:
 - To renovate the existing primary office entrances on New York Avenue and K Street, N.W. by eliminating the existing double-height entrance canopies and making other design revisions;
 - To redesign a small portion of the ground-floor façade immediately adjacent to the New York Avenue, N.W. entrance in coordination with broader interior renovations being undertaken to support the Building’s office tenant;
 - To make refinements to the signage for the Building entrances and renovated portion of the ground-floor façade; and
 - To incorporate two upper-story “sky garden” terraces to serve as amenity space for the Building’s office tenant, with one terrace located on the 10th floor and facing New York Avenue, N.W. to the south and the other terrace located on the 11th floor and facing K Street, N.W. to the north.(Ex. 3, 3C.)

III. RESPONSES TO THE APPLICATION

OP Report

6. On February 17, 2024, OP submitted a report stating that OP did not object to the Application being considered as a Modification of Consequence under Subtitle Z § 703 and recommending approval of the Application. (Ex. 7.)
7. OP concurred with the Applicant that the request met the criteria for a Modification of Consequence and would result in improvements to the Building character and be consistent with the original PUD approval and subsequent modifications. (*Id.*)

¹ Ex. 2 and Ex. 3 are the same document.

ANC Report

8. On January 30, 2024, ANC 2C submitted a written report stating that at its January 9, 2024, properly noticed public meeting, at which a quorum was present, ANC 2C voted unanimously in support of the Application. (Ex. 6.)

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.” Under Subtitle Z § 703.4, examples of a Modification of Consequence include “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.”
3. 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 redesign of architectural elements from the final design most recently approved by the Commission in the Approved PUD, and therefore the modification can be granted without a public hearing pursuant to Subtitle Z § 703.1.
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 2C.
5. The Commission concludes that, because ANC 2C submitted a report prior to the Commission’s consideration of the Application at its February 29, 2024 public meeting and there are no other parties to the Application, the requirement of Subtitle Z § 703.17(c)(2) to establish a timeframe for responses by all parties was unnecessary in this case. The Commission therefore proceeded with deliberating on this case at its February 29, 2024 public meeting.
6. The Commission finds that the Application is consistent with the Approved PUD because the requested modifications are minor refinements to the Building’s design that do not result in any change in use or require additional zoning relief.

“Great Weight” to the Recommendations of OP

7. The Commission must give “great weight” to the recommendations of OP stated in the OP Report 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. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016.)

8. The Commission notes OP's conclusion that the Application is appropriately 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 ANCs

9. 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. *Spring Valley-Wesley Heights Citizens Ass'n v. District of Columbia Zoning Comm'n*, 856 A.2d 1174, 1180 (D.C. 2004.) 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 Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978.) (citation omitted).
10. The Commission finds ANC 2C's recommendation to approve the Application persuasive and concurs in that judgment.

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 Z.C. Order No. 920, as amended by Z.C. Order Nos. 920-A, 01-01A, and 01-01B.

The conditions of Z.C. Order No. 920, as amended by Z.C. Order Nos. 920-A, 01-01A, and 01-01B, remain unchanged and in effect, except as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions in **bold** and underlined text):

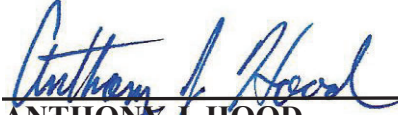
1. The PUD site shall be developed in accordance with the plans prepared by Davis Carter Scott, marked as Exhibits 20 and 44 in Z.C. Case No. 99-6M/88-16C, as modified by the plans contained in Exhibit 2C in Z.C. Case No. 01-01A, ~~and~~ **and the plans contained in Exhibits 3C1-3C2 in Z.C. Case No. 01-01C**, and as further modified by the guidelines, conditions, and standards of this Order.
...
8. The restrictions and requirements of the comprehensive design manual contained in Exhibit 6A in Z.C. Case No. 01-01B **and Exhibits 3C1-3C2 in Z.C. Case No. 01-01C** (“Plans”) shall, in combination with these conditions, govern the building's retail signage and storefronts, as specified therein. **In the event of conflict, the plans submitted as Exhibits 3C1-3C2 in Z.C. Case No. 01-01C shall control.**

With regard to retail tenant signage and awnings, the applicant shall be permitted to install a variety of retail tenant signage and ...

VOTE (February 29, 2024): 4-0-1

(Tammy Stidham, Anthony J. Hood, Robert E. Miller and Joseph S. Imamura to approve; 3rd Mayoral Appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 01-01C shall become final and effective upon publication in the *District of Columbia Register* on June 14, 2024.



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.