

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance (via email)^{SS}
From: Sharon S. Schellin ^{SS}
Secretary to the Zoning Commission
Date: January 5, 2009
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on January 9, 2009:

1. Z.C. Order No. 06-03A; and
2. Z.C. Notice of Public Hearing (Case No. 08-26).

Attachment

ZONING COMMISSION
District of Columbia
CASE NO. 06-03A
EXHIBIT NO. 7

Zoning Commission Order No. 06-03A
Z.C. Case No. 06-03A
(Modification to a Design Reviewed and Approved within the Capitol Gateway (“CG”)
Overlay Zone for 100 M Street, S.E., Lot 77, Square 743-N)
March 26, 2007¹

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the “Commission”) was held on March 26, 2007. At the meeting, the Commission approved an application from Opus East, LLC (the “Applicant”) for a minor modification to an approved design for the mixed-use project being constructed at 100 M Street, S. E., that review having been carried out pursuant to Chapter 16 (Capitol Gateway Overlay) and the Consent Calendar Regulations of Chapter 30 of the District of Columbia Municipal Regulations (“DCMR”), Title 11, Zoning. Because each of the proposed modifications was deemed minor, a public hearing was not conducted.

The Commission determined that this modification request was properly before it under the provisions of Sections 1604 and 3030 of the Zoning Regulations.

FINDINGS OF FACT

By Z.C. Order No. 06-03, dated May 25, 2006, the Commission approved the design of a 12- story building containing general offices over a ground floor that provided all the floor area required for “preferred uses” under the provisions of § 1604 of the Zoning Regulations. The Commission also approved certain area variances in the initial hearing and Order.

The property, to be known as 100 M Street, S.E., is located at the northeast corner of M and First Streets, S.E.; it is also known as Lot 77 in Square 743-N.

The floor area ratio (“FAR”) of the property will remain unchanged at 10.0 FAR. The building height will remain unchanged, not exceeding 130 feet. Four levels of below-grade parking will still be provided, and vehicular access to this parking will still be provided from First Street, S.E.

By letter dated March 2, 2007 and diagrams accompanying that letter, the Applicant requested approval to modify the following aspects of the design approved May 25, 2006:

1. Modify the façade of the retail area at ground level and adjacent landscaping facing First Street, S.E., noting that these changes were necessitated by a widening of First Street’s “cartway” being planned by the District of Columbia’s Department of Transportation (“DDOT”) and corresponding elimination of areas that had previously been planned for outdoor seating in previously projected public space located between the property line and the edge of the official sidewalk closest to that property line;

¹ It was previously believed this Order was published in the *D.C. Register* on December 19, 2008. Upon learning that the Order was not published on said date, it was then published on January 9, 2009.

2. Secure flexibility to have one or two entrances into the ground floor area from the flanking sidewalk along First Street, S.E;
3. Reduce the “clear ceiling” height of the eastern retail area from 13’ 8” to 13’ 2” and reduce its depth from M Street, S.E., to no less than 45 feet, and dedicate the area between the relocated rear wall of this retail area and the loading berths and platforms as a fitness room for the building’s tenants (an accessory use) to be established at the same floor plane as the office entrance lobby rather than the lower plane of the eastern retail area; and
4. Modify the glazing on the eastern façade of the building to comply with requirements of the building code, which limits the percentage of glazing to 45% when abutting another property.

By letter dated March 15, 2007, the Applicant provided additional information and noted that the retail entrances along First Street, S.E., as well as the entrance to the portion of that retail corner facing both First and M Street, S.E., would require patrons to enter at a plane above that of the floor, the height varying from 13” along M Street to as much as 30” along First Street, S.E. (varying as a function of the grade of the planned adjacent sidewalk tapered up to the property line from the top of the projected curb along the widened segment of First Street, S.E.). Applicant indicated that the areas in which landings, stairways, and systems of ramps or devices to enable those with mobility limitations to reach the level of the retail area within that area would be in conflict with the definition of “clear ceiling, height of” in the Zoning Regulations and, accordingly, requested approval for these portions of the respective areas to be exempt from the measurements involved.

By memorandum dated March 16, 2007, the Office of Planning (“OP”) commented on the request and recommended approval of the requested modifications. The report described the changes being carried out by DDOT over which the Commission, the Applicant, and OP have no control. While the Commission does not support the widening of the “cartway” of First Street, S.E., between M and I Streets, S.E., which OP indicated is now planned by DDOT, it feels that the modifications requested by the Applicant are appropriate to the changed circumstances.

By letter dated March 22, 2007, Advisory Neighborhood Commission (“ANC”) 6D, indicated that it had, at its regularly scheduled March 12th meeting, at which a quorum was present, (with 4 of 7 commissioners necessary for a quorum), voted 5-0-1 to support the request of the Applicant for modifications to its previously approved project.

The Commission finds that requested minor modifications do not affect the essential elements of the approval given by the Commission for this project, including use, height, gross floor area, lot occupancy, setbacks, or number of parking spaces. While it reduces the percentage of the

ground floor area set aside for preferred uses, the total percentage of ground floor area in those uses still provides considerably more than the 35% required. The changes in the height of the ceiling of one retail area, and portions of the other for landings and stairs, are likewise of no great significance.

On March 26, 2007, at its special public meeting, the Commission reviewed the application as a Consent Calendar matter and granted approval of the minor modifications to the design originally approved.

The Commission concurs with the Applicant that approving the application is appropriate and is not inconsistent with the intent of 11 DCMR, §§ 1604 and 3030.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission concludes that the proposed modifications are minor and do not change the intent of the previously approved Z. C. Order No. 06-03. Further, the Commission concludes that its decision is in the best interests of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

The proposed modification does not affect the essential elements of the approved design, including use, height, gross floor area, lot occupancy, setbacks, or number of parking spaces. Other than aspects noted, no other condition of the approved design will be affected. The material facts relied upon by the Commission in approving the design in Z.C. Order No. 06-03 have not changed except as set out herein. The modifications are minor such that consideration as a Consent Calendar item without public hearing is appropriate.

As provided in the decision, the Commission approves the modifications requested.

DECISION

In consideration of the Findings of Fact and Conclusions of Law provided herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of the application for minor modifications of an approved design for the property located at the northeast corner of First and M Streets, S.E., in Square 743-N, Lot 77, known as 100 M Street, S.E. as set out in Applicant's letters of March 2, 2007 (summarized above in four numbered paragraphs) and March 15, 2007 (relating to clear heights of ceiling above stairs and landings). The Applicant shall have the flexibility to make any or all of the modifications it requested, but must otherwise follow the original approvals.

Vote of the Zoning Commission taken at its public meeting on March 26, 2007, by a vote of 5-0-0 (Carol J. Mitten, Gregory Jeffries, Anthony J. Hood, John G. Parsons, and Michael Turnbull to approve).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is on _____.