

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 00-33A
Z.C. Case No. 00-33A
Jemal's Cayre Woodies L.L.C.
Planned Unit Development Modification of Consequence
@ 1025 F Street, NW (Lot 805 in Square 346)
November 18, 2021

Pursuant to notice, at its November 18, 2021, public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Jemal's Cayre Woodies L.L.C. (the “Applicant”) for a Modification of Consequence to the conditions and approved plans of the planned unit development originally approved by Z.C. Order No. 940 (Case No. 00-33C) (the “Original Order”) for Lot 805 in Square 346, with a street address of 1025 F Street, N.W. (the “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
I. BACKGROUND

Prior Approval

1. The Original Order facilitated the comprehensive rehabilitation of the historic Woodward & Lothrop headquarters building (the "Building") on the Property with a mixed-use redevelopment consisting of retail and service uses in the cellar and first two floors of the Building and office uses on all floors above. The Building has been occupied and operated consistent with the Original Order for nearly twenty years. The Original Order also established controls on two additional properties elsewhere in the downtown area, providing for the construction of two residential buildings near the Property, in Squares 377 and 517. Both residential buildings were timely constructed and have been consistently occupied for residential use.

Parties

2. The only party to the Z.C Case No. 00-33A other than the Applicant was Advisory Neighborhood Commission (“ANC”) 2C, the “affected” ANC pursuant to Subtitle Z § 101.8.

II. The Application

3. On October 20, 2021, the Applicant filed the Application requesting a Modification of Consequence to authorize modifications to the conditions approved by Z.C. Order No. 940 in order to provide flexibility for the Applicant to: (a) expand the permissible uses of the second floor of the Building to include office uses as well as the retail/service and arts/arts-related uses provided in the PUD approval; and (b) convert a portion of vacant cellar level space to building amenity space for use by the occupants of the Building, all in order to enhance the marketability of the Building for leasing purposes given the current very challenging leasing environment.
4. The Applicant provided evidence that on October 20, 2021, it served the Application on ANC 2C and the Office of Planning (“OP”) as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2.)
5. OP submitted a report dated November 8, 2021, stating no objection to the Application being considered as a Modification of Consequence and recommending approval of the Application (the “OP Report”). (Ex. 3.) The OP Report noted that the retail and other preferred uses in the Building generated and transferred 43,260 Transferable Development Rights (“TDR”) under § 1703.4 of the 1958 regulations and requested that the Applicant compare that number of TDR with the number of TDR that would have been generated under the reduced preferred-use square footage proposed by the Applicant in this Application. The Applicant provided responsive materials to OP's request in its submission dated November 17, 2021. (Ex. 5.)
6. ANC 2C submitted a written report dated November 17, 2021, stating that at its duly noticed public meeting of September 14, 2021, at which a quorum was present, ANC 2C voted to support the Application (the “ANC Report”) noting the current very challenging retail environment. (Ex. 4.)

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” and “a redesign or relocation of architectural elements” as examples of Modifications 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 2C.

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 and architectural elements approved by the Original Order and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission concludes that because ANC 2C, the only party other than the Applicant to the Original Order, had filed a response to the Application, the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties to the original proceeding had been met, and therefore the Commission could consider the merits of the Application at its November 18, 2021 public meeting.
7. The Commission finds that the Application is in keeping with the approved planned unit development, as authorized by the Original Order, because grant of the requested flexibility to allow the Applicant to lease the second floor of the Building for office or other permissible uses in the zone district is likely to invigorate the Building, which has suffered extensive retail vacancies over the course of the past few years, by enhancing the opportunity for the ground floor space to be leased to retail, service, eating and drinking establishments or entertainment and arts uses that would not be able to move forward with leasing the larger space.

“Great Weight” to the Recommendations of OP

8. Pursuant to § 13(d) 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)) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP. (*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. 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)) and Subtitle Z § 406.2, the Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC. To satisfy this great weight requirement, District agencies 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 (1978).)
11. The Commission finds the ANC Report’s support for the Application persuasive and concurs in that judgment that the requested Application merits approval given the very challenging current state of retail, especially in the downtown area.

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 Applicant's request for a Modification of Consequence to modify Z.C. Order No. 940, subject to the following conditions and provisions:


The conditions in Z.C. Order No. 940, remain unchanged and in effect, except that:

Condition No. 3 as stated or incorporated in these orders, is hereby revised to read as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions in **bold** and underlined text):


3. The permitted uses on the cellar level, vaults, and first ~~two~~ floors of the PUD building shall be limited to those preferred uses listed in §§ 1710 and 1711 of the Zoning Regulations as more specifically referenced in Condition No. 5, below. The remainder of the building may be used for any use permitted in the DD/C-4 district. **Notwithstanding the above requirement, approximately 10,000 square feet of building amenity space shall be permitted to be provided in the cellar level.**

VOTE (November 18, 2021): **5-0-0** (Peter G. May, Robert E. Miller, Anthony J. Hood, Peter A. Shapiro, Peter G. May, and Joseph S. Imamura to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is, on December 31, 2021.



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.