

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-18D
Z.C. Case No. 07-18D
Jemal's Up Against the Wall, LLC
(Modification to Approved Planned Unit Development)
July 25, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on May 2, 2013, to consider an application from Jemal's Up Against the Wall, LLC (the "Applicant"), the owner of Lots 18, 19, and 818-821 in Square 347, for the approval of a modification to the planned unit development ("PUD") approved pursuant to Z.C. Order No. 07-18, as amended under Z.C. Order Nos. 07-18A, 07-18B, and 07-18C. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. Pursuant to Z.C. Order No. 07-18, dated April 14, 2008, effective May 16, 2008, the Commission granted consolidated approval of a PUD for the property located at 1000 F Street, N.W., more particularly described as Lots 18, 19, 818-821 in Square 347 (the "Property").
2. The Property has a land area of approximately 11,790 square feet and is located at the southwest corner of 10th and F Streets. The site is currently improved with one- and two-story commercial buildings. It is zoned DD/C-4 and is located within the Pennsylvania Avenue National Historic District.
3. Pursuant to Z.C. Order No. 07-18, the Commission approved a PUD on the Property that consists of a new 11-story office building with approximately 97,872 square feet of gross floor area, including 7,813 square feet devoted to retail uses. The approved project has a density of 8.3 floor area ratio ("FAR") and will rise to a maximum height of 120 feet, as measured from F Street. The approved project also includes four levels of below-grade parking with approximately 19 zoning-compliant parking spaces, four compact spaces, and 38 vault spaces.

4. Pursuant to Z.C. Order No. 07-18A, the Commission granted a two-year extension of time for the PUD, extending the approval until May 16, 2012. Within said time an application was to be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations, and construction of the project was to commence no later than May 16, 2013.
5. Pursuant to Z.C. Order No. 07-18B, the Commission extended the validity of the PUD for an additional two years such that an application for a building permit would need to be filed no later than May 16, 2014, and construction of the project is to commence no later than May 16, 2015.
6. Pursuant to Z.C. Order No. 07-18C, the Commission granted an extension of the deadline to complete Condition No. 4 of the Z.C. Order No. 07-18¹ to May 16, 2014.
7. On October 15, 2012, the Applicant filed an application with the Commission for a modification of the PUD. (Exhibit ["Ex."] 1.) The application included plans that depicted a modification to the parking for the PUD, from a four-level underground parking garage to one level of underground parking, as well as modifications to the ground floor of the building.
8. On November 29, 2012, the Applicant submitted a revised set of architectural plans depicting two levels of below-grade parking instead of one. The Applicant also amended its application to include a request for flexibility to permit either office or retail use in the historic building at the corner of 10th and F Streets. (Ex. 9, 10.)
9. Under the proposed PUD modification, the Applicant would reduce the number of parking spaces for the project from four levels with 61 parking spaces to two levels with a total of 34 spaces. Of the 34 parking spaces proposed, only five would be zoning compliant.
10. At its public meeting held on December 10, 2012, the Commission voted to set down the application for public hearing.
11. On February 12, 2013, the Applicant submitted a Prehearing Statement. (Ex. 17.) The Prehearing Statement included elevations and renderings of the project as requested by the Commission at setdown.
12. On April 12, 2013, the Applicant submitted a Supplemental Filing. (Ex. 19.) The supplemental filing included a request for flexibility to provide either a LEV/Hybrid

¹ Condition No. 4 of Z.C. Order No. 07-18 reads: "Within five years after the effective date of this Order, the Applicant shall relocate and reassemble the Waffle Shop on a new site, consistent with the Preservation Agreement submitted as part of Exhibit 21 to the record."

vehicle parking space or eight bicycle parking spaces based on subsequent discussions with the District Department of Transportation (“DDOT”).² The filing also included a revised set of architectural plans, a letter of support from Advisory Neighborhood Commission (“ANC”) 2C dated December 12, 2012, and a report by the Traffic Consultant for the project.

13. After proper notice, the Commission held a public hearing on the application on May 2, 2013. The parties to the case were the Applicant and ANC 2C, the ANC within which the Property is located.
14. At the public hearing, the Applicant submitted Sheets A3a and A3b, which are revisions to the "Modified Parking Layout for Parking Level P01". (Ex. 25.) According to the cover letter accompanying the plans (Ex. 24), these sheets supersede Sheet A3 of the plans submitted as part of the Applicant's Prehearing Statement.
15. Patrick Burkhart from Shalom Baranes & Associates testified at the public hearing as the principal witness on behalf of the Applicant.
16. At the public hearing, the Applicant testified that the PUD modification was scheduled to be considered by ANC 2C on May 13, 2013, and that the Applicant was seeking a letter in support of the proposed PUD modification that supersedes the letter from ANC 2C dated December 12, 2012.
17. The Office of Planning (“OP”) testified in support of the PUD Modification at the public hearing.
18. DDOT testified in support of the PUD Modification at the public hearing.
19. At the conclusion of the public hearing held on May 2, 2013, the Commission agreed to leave the record open for a letter from ANC 2C and a final consolidated set of architectural plans from the Applicant.
20. The Commission took proposed action to approve the PUD Modification on June 10, 2013.
21. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) on June 11, 2013 under the terms of the District of Columbia Home Rule Act. NCPC, by report dated July 16, 2013 found that the proposed modifications to the project will not affect the federal interests. (Ex. 33.)

² The architectural plans submitted to the Commission at the public hearing depicted the LEV/Hybrid parking space and additional bicycle parking. Therefore, the request for this flexibility was withdrawn by the Applicant at the public hearing.

22. The Commission took final action to approve the modification application on July 25, 2013.

Modified PUD Project

23. The approved PUD provides four levels of underground parking with approximately 19 zoning-compliant parking spaces, four compact spaces, and 38 vault spaces. The compact spaces and vault spaces do not count toward the Applicant's required provision of off-street parking. Under § 2101.1 of the Zoning Regulations, 45 parking spaces are required for the approved PUD.
24. Under the proposed modification, the PUD would have two levels of underground parking, with a total of 34 spaces. Of the 34 spaces, 14 would be achieved through mechanical lifts stacking the vehicles; only five of the 34 spaces would be zoning compliant. In addition, in lieu of providing the car-sharing space proffered through the approved PUD, the project will have a space reserved for an LEV/Hybrid vehicle. Finally, there will be parking for 32 bicycles at Parking Level P1.
25. The PUD Modification provides for other minor changes to the project design: (a) the loading entrance to the building from the alley has been revised; (b) there was a shift in the location of core service areas within the building (elevator shafts and stairwells, secondary lobby entrance of the F Street side of the building, and interior walls to provide approximately 13 more linear feet of retail frontage along F Street); and (c) the terra cotta façade on the south side of the building was replaced with brick.

Development Flexibility

26. The proposed PUD modifications require flexibility in the following areas:
- a. *Parking.* Flexibility to permit five zoning-compliant spaces where 45 parking spaces are required under the Zoning Regulations; and
 - b. *Use of Historic Building.* Flexibility to have either retail or office use in the historic building at the corner of 10th and F Streets, N.W.

Conditions to PUD Approval

27. The PUD Modification affects the following two conditions of the approved PUD:
- a. Condition No. 5 of Z.C. Order No. 07-18 provides for refinements to the garage configuration, including layout, number of spaces, and/or elements, as long as the number of parking spaces does not decrease below the 19 zoning-compliant spaces specified. In this case, as a result of the use of vault space, stacking of

spaces and groups of compact spaces of less than five, only five parking spaces would be zoning compliant; and

- b. Condition No. 2 of Z.C. Order No. 07-18 requires that one space on the first level of the garage be reserved for a car-sharing space. However, the parking garage will no longer be open 24 hours day; therefore, access to the car-sharing space would be limited. In lieu of a car-sharing space, the Applicant will provide one space for an LEV/Hybrid vehicle.
28. With the exception of the two conditions above, the PUD as modified under this application, would be subject to the conditions originally set forth in Z.C. Order No. 07-18D, except as amended by Z.C. Order Nos. 07-18A, 07-18B, and 07-18C.

Office of Planning Report

29. By report dated December 10, 2012, OP recommended that the application be set down for public hearing, and opined that the proposed alternative plans respect the general intent of the previously approved PUD. The report recommended that the Commission schedule a public hearing on the modification application. (Ex. 11.)
30. By report dated April 22, 2013, OP stated that the requested modifications to the PUD are not inconsistent with the elements of the Comprehensive Plan. OP recommended the Commission approve the PUD Modification subject to certain changes that were reflected in the architectural plans submitted by the Applicant at the public hearing. (Ex. 20.)

DDOT Report

31. By report dated April 22, 2013, DDOT supported the Applicant's request to reduce the vehicle parking for the project as long as the Applicant provides 32 code-compliant bicycle parking spaces. DDOT's report also states that the Applicant should monitor the valet operations of the parking garage during peak periods to ensure that no disruption or queuing in the public alley occurs. (Ex. 21.)

Post-Hearing Submissions

32. An electronic copy of a letter in support of Z.C. Case No. 07-18D from ANC 2C was posted on May 20, 2013. (Ex. 28.)
33. On May 20, 2013, the Applicant submitted a final consolidated set of the architectural plans and drawings that were previously submitted to the Commission for consideration. (Ex. 30.)

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a modification to a previously approved consolidated PUD. Any modifications proposed to an approved PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Commission. The proposed modification shall meet the requirements for and be processed as a second-stage application, except for minor modifications and technical corrections as provided for in § 3030. (11 DCMR §2409.9.) The Commission treated this modification request as a second-stage PUD application.
3. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
4. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
5. The modified PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations. The modified PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The uses for this project are appropriate for the Property. The impact of the project on the surrounding area and the operation of city services is acceptable given the quality of the public benefits in the project.
6. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable tradeoffs for the requested development flexibility.
7. Approval of this modified PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly

development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

8. The Commission is required under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and conditions expressed in the written report of an affected ANC. In this case, ANC 2C voted unanimously to support the modification application and recommended that the Commission approve the application (Ex. 28.) The Commission has given ANC 2C's recommendation great weight in approving the modification application.
9. The Commission is required under § 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) to give great weight to OP recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.
10. The PUD Modification is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of this application for a modification of the PUD approved at 1000 F Street, N.W. (Lots 18, 19, and 818-821 in Square 347) originally approved in Z.C. Order No. 07-18, subject to the following conditions:


1. The PUD, as modified, shall be developed in accordance with the plans prepared by Shalom Baranes Associates, dated May 22, 2013, and titled "1000 F Street, NW Washington DC | Modification to a Planned Unit Development Approved Pursuant to Zoning Commission Case No. ZC 07-18", marked as Exhibit 30 of the record (the "Plans").
2. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements. With this modification, the PUD would require additional flexibility to permit five zoning-compliant spaces where 45 parking spaces are required under the Zoning Regulations; and
 - b. The historic building at the corner of 10th and F Streets, may be used for either office or retail.

3. With the exception of the flexibility granted in Paragraph 2 above, the PUD shall be subject to the conditions previously set forth in Z.C. Order No. 07-18, except as amended by Z.C. Order Nos. 07-18A, 07-18B, and 07-18C.
4. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General. Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Commission.
5. As previously approved in Z.C. Order No. 07-18B, the PUD shall be valid until May 16, 2014. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1 and construction must commence no later than May 16, 2015. Failure to take these actions will result in the expiration of the PUD approval as of the applicable date.
6. 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.

On June 10, 2013, upon the motion of Vice Chairman Cohen, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, Michael G. Turnbull, and Robert E. Miller to approve).

On July 25, 2013, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, Michael G. Turnbull, and Robert E. Miller to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on August 23, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING