

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-22A
Z.C. Case No. 05-22A
View 14 Investments, LLC
(PUD Modification @ Square 2868, Lot 155)
June 8, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on April 20, 2015, to consider an application from View 14 Investments, LLC (“Applicant”), to modify an approved planned unit development (“PUD”) approved pursuant to Z.C. Order No. 05-22. 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 Hearings

1. Pursuant to Z.C. Order No. 05-22, dated January 9, 2006, and effective on February 3, 2006, the Commission granted consolidated approval for a PUD for property located at 2303 14th Street, N.W. (Square 2868, Lot 155) (“Subject Property”). The Subject Property has a land area of approximately 34,357 square feet and is located on the east side of 14th Street, N.W., between Florida Avenue, N.W. and Belmont Street, N.W., in the C-2-B Zone District.
2. The approved PUD is a mixed-use building known as View 14 that consists of approximately 160 to 195 apartment units, approximately 33,517 square feet of retail and service uses, and a minimum of 151 parking spaces, 15 of which are devoted to retail use. The maximum building height for the Approved PUD is 90 feet, and the maximum density is 6.0 floor area ratio (“FAR”).
3. On March 24, 2014, the Applicant filed an application with the Commission for a modification to the approved PUD. (Exhibits [“Ex.”] 1–4.) (“Application”) The Application requested permission to establish an animal boarding use, specifically a dog day care center use in a portion of the retail space on the ground floor of the Subject Property (“PUD Modification”). The dog day care center use would include pet

grooming and overnight animal boarding, which is permitted only by special exception under 11 DCMR § 735.

4. By report dated June 20, 2014, the Office of Planning (“OP”) noted that it was not opposed to the Application being set down for a public hearing. (Ex.11.) However, OP stated that the Applicant had recently applied for a special exception under 11 DCMR § 735 for the same use from the Board of Zoning Adjustment (“BZA”), which the BZA had denied. At the time of the BZA application, § 735.2 provided that a proposed animal boarding use “shall not abut a residence zone.” Although the Applicant claimed the proposed use met this criterion, the BZA disagreed and denied the application. OP noted that the Applicant’s modification request contended that the BZA made errors in its findings, thus suggesting that the Applicant may be attempting to use the PUD modification as a means of obtaining Commission review of a BZA order. The report also noted that OP recently submitted to the Commission a proposal to clarify § 735’s prohibition against an animal boarding use abutting a residence zone, which was assigned Z. C. Case No. 14-10.
5. At its public meeting on June 30, 2014, the Commission voted to hold in abeyance the set down of the Application until after the Commission completed its review of Z.C. Case No. 14-10.
6. On November 24, 2015, the Commission took proposed action to adopt Z.C. Case No. 14-10. The advertised text proposed to amend § 735.2 to eliminate the prohibition against an animal boarding use abutting a residential zone, but to require that the use not be located within 25 feet of a lot within a Residence District — a restriction that the Applicant’s proposed use would meet.
7. On December 15, 2014, the Applicant submitted a revised Application and, noting the pendency of Z.C. Case No. 14-10, requested the Commission to set down the revised Application for hearing.
8. On February 9, 2015, the Commission voted to adopt amendments to § 735, which became effective upon the publication of a Notice of Final Rulemaking in the *D.C. Register* on March 13, 2015, and which included the amendment to § 735.2. At that same meeting, the Commission voted 5-0-0 to schedule a public hearing on the Application.
9. On February 13, 2015, the Applicant submitted a prehearing statement. (Ex. 14, 15-15H.) On March 6, 2015, a description of the proposed modification and the notice of the public hearing in this matter were published in the *D.C. Register*. (Ex. 18.) On February 25, 2015, the notice of the public hearing was mailed or emailed to all property owners within 200 feet of the Subject Property, as well as to Advisory Neighborhood Commission (“ANC”) 1B, the ANC in which the Subject Property is located.

10. On March 31, 2015, the Applicant submitted a supplemental statement in support of the Application, which provided information regarding the Applicant's outreach to ANC 1B and the Meridian Hill Neighborhood Association ("MHNA"). (Ex. 26.)
11. By letter dated April 17, 2015, MHNA stated that it would support the PUD Modification "[p]resuming the conditions articulated below would be included in a Commission order:" (Ex. 34.)
 - a. Dog walking will be permitted on the 14th Street commercial strip only and not on the adjoining residential streets;
 - b. Employees of any animal boarding facility or dog day care center will wear an identifiable uniform while walking pets outside of the facility;
 - c. Members or clients of any animal boarding facility or dog day care center will sign an agreement to obey all traffic and parking regulations; and
 - d. Any animal boarding facility or dog day care center will provide a "concierge" service to retrieve pets from and deliver them to cars as needed, Monday through Friday during peak hours, to obviate the need for parking and stopping.
12. On April 14, 2015, ANC 1B submitted a letter indicating that at its regularly scheduled public meeting on April 2, 2015, at which a quorum was present and notice properly given, the ANC voted unanimously to support the PUD Modification. (Ex. 32.)
13. By report dated April 10, 2015, OP recommended approval of the PUD Modification. (Ex. 27.) OP asserted that the proposed use would meet the specific special exception conditions of § 735 as amended. Specifically, OP found that the proposed dog day care center would not be located within 25 feet of a lot within a Residence District and that the use would produce no odor or noise objectionable to residential units within the same building or to nearby properties. The OP report also concluded that the dog day care center use would not be inconsistent with the general intent of the approved PUD or with the Comprehensive Plan. In its report, OP stated support for the following conditions to approval: (i) the dog day care operator shall advise clients to refrain from double-parking on streets adjacent to the Subject Property when dropping off and picking up dogs; and (ii) in order to keep dogs from the front yards on the surrounding residential streets, employees of the dog day care center shall only walk dogs along the 14th Street corridor.
14. By report dated April 10, 2015, the District Department of Transportation ("DDOT") indicated that it has no objections to the PUD Modification. (Ex. 28.) DDOT stated that the existing retail parking spaces provided for the Subject Property satisfy the off-street parking requirements, and that the dog day care center use would not have any adverse

impacts on the travel conditions of the District's transportation network. DDOT also determined that a transportation analysis was not required for the Application.

15. The public hearing on the Application took place on April 20, 2015. The parties to the case were the Applicant and ANC 1B. No requests for party status were filed for this case.
16. Mr. Walid Takriti of Acoustonica was accepted as an expert in the area of acoustics and testified on behalf of the Applicant. Mr. William Licko of UDR/View 14 Investments, LLC and Mr. Phillip Kasdorf also addressed the Commission on behalf of the Applicant. With respect to the MHNA letter, at the April 20, 2015, hearing, the Applicant stated that it would be willing to agree to MHNA's conditions, except that the Applicant proposed to modify the fourth condition to state the following: as necessary to mitigate adverse traffic impacts, the dog day care center operator will provide a concierge service to retrieve dogs from cars on weekdays only between 7:30 a.m. and 8:30 a.m. The Applicant also stated that based on the dog day care center operator's experience in other U.S. cities, it expects that a significant percent of customers will walk their dogs to and from the dog day care center. The Applicant indicated that ample on-street parking is available in the immediate proximity to the Subject Property, including on 14th Street and Florida Avenue, such that stacking or back-up traffic is not likely to be an issue.
17. Mr. Jesse Heier testified in opposition to the Application at the public hearing. Mr. Heier argued that approval of the Application should not be granted because the BZA previously denied the Applicant's request to locate a dog day care center at the Subject Property and that the Applicant was essentially "forum shopping" to achieve a favorable ruling.
18. At the conclusion of the public hearing held April 20, 2015, the Commission voted to take proposed action to approve the PUD Modification, thereby authorizing the referral of the Application for the National Capital Planning Commission ("NCPC") for its review.
19. The NCPC Executive Director, by delegated action dated May 13, 2015, found that the proposed PUD modification would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 39.)
20. On June 8, 2015, the Commission voted to take final action to approve the Application subject to conditions that will be added to the original order of approval.

The Requested PUD Modification

21. The Applicant requested that the approved PUD be modified to permit an animal boarding use, in this instance dog day care center in a portion of the ground-floor retail space at the Subject Property.
22. The dog day care center will consist of approximately 4,300 square feet of floor area, and the entrance to it will be at the corner of Florida Avenue and 14th Street, with frontage along 14th Street. The dog day care center will offer cage-free dog day care in five “play parks,” pet grooming, and overnight boarding. The facility will include an on-site retail store and a lounge for dog owners who choose to wait at the facility while their dog is being groomed
23. Within the C-2-B Zone District, an Animal Boarding use is permitted by special exception.
24. Subsection 2405.7 of the PUD regulations authorizes the Commission to approve “any use that is permitted as a special exception and that would otherwise require the approval of the Board of Zoning Adjustment.” Subsection 2405.8 further provides that the Commission is “not required to apply the special exception standards normally applied by the Board.”
25. In this case, the Applicant is not seeking the flexibility permitted by § 2405.8, but instead asserts that the proposed use meets the special exception standard applicable to the BZA including the general standard set forth in § 3104 and the specific standards set forth in § 735.
26. As required by § 735.2, the animal boarding use would be in excess of 25 feet from a residence zone. The use would be located on the western side of the building fronting on 14th Street, N.W. and the R-5-B Zone District, which is located to the east across a 15-foot alley.
27. The animal boarding use will take place entirely within an enclosed building as required by § 735.4(a).
28. Pursuant to § 735.3 and as described in Findings of Fact 29 through 34, the Applicant has demonstrated that the animal boarding use will produce no noise or odor objectionable to adjacent properties, including residential units located in the same building as the use
29. Twenty-four apartment units are located on the second floor of the building above the retail space. Of those, five units are situated directly above the proposed dog day care center facility. The Applicant submitted a petition with 105 signatures in support of the proposed dog day care center use at the Subject Property, 100 of which were from

residents of the Subject Property. (Ex. 13G.) Residents from three of the five units directly above the dog day care center space signed the petition in support. The Applicant stated that it was unable to reach the tenant in one of the five units, and one of the units was vacant at the time of the petition.

30. The Applicant also submitted a noise study conducted by Polysonics, an acoustics consulting firm, regarding the proposed dog day care center's impact on noise. (Ex. 13E.) According to Polysonics' report, in order to fully mitigate noise impacts such that the background noise in the abutting residential units remains at required levels, the Applicant will implement the following sound-proofing measures for the build-out of the dog day care center, which meet the requirements of § 735.4(c):
 - a. The Applicant will install an acoustical gypsum board ceiling isolated from the building structure on spring hangers with fiberglass insulation in the ceiling space;
 - b. The Applicant will minimize penetrations in the drywall ceiling and will properly pack, caulk, and seal any piping in the concrete slab to prevent sound leaks;
 - c. The Applicant will install a finished ceiling with acoustical ceiling panels suspended below the gypsum board ceiling; and
 - d. The Applicant will install two-inch wall panels covering at least 50% of the available wall surface in each room for additional sound absorption.
31. The above insulation and noise prevention measures will not have any impact on the flow of fresh air in the building because the air circulation elements and distribution systems would be located in a different "zone" located above the finished ceiling.
32. The operator of the dog day care center will also mitigate noise impacts through the following operational measures:
 - a. Every dog will be evaluated to make sure it is a perfect fit for the dog day care center and for the pack of dogs. Chronic barkers will be disjoined from the club;
 - b. Access to the play parks will be restricted to employees, and communication will be done through walkie-talkies, which will limit disruption with the intention of keeping the dogs calm. There will also be a one-way glass to enable staff members and dog owners to observe dogs without disrupting the pack;
 - c. The facility will play "chill music" around the clock, which the dogs enjoy; and

- d. All of the dog handlers will be trained on several methods to minimize dog barking and will play games with and otherwise engage the dogs.
33. The design, construction, and operational measures proposed for the dog day care center have been successful in other facilities with the same dog day care center operator, including facilities located in mixed-use buildings with residential units located directly above.
34. The dog day care center operator will fully mitigate odor such that the dog day care center use will not create any odors objectionable to adjacent properties, including residential units in the Subject Property. The Applicant will mitigate odor with the following measures:
- a. As required by § 735.4(f), high-frequency air ventilation systems will be installed to protect against bacteria and odor. The facility will use HEPA filters that will be serviced on a quarterly basis;
 - b. The facility will be designed with epoxy floors, impermeable surfaces, and stainless steel equipment. Service stations will be located in every play park and will be stocked with everything that is needed to keep the play park clean;
 - c. The dog day care center operator will use commercial cleaning equipment, including commercial scrubbers, commercial window cleaning equipment, sanitizers, central vac systems, and a commercial washer/dryer. The cleaning solutions will be from WAXIE's green product line;
 - d. In order to maintain accountability for cleanliness, the dog day care center staff will clean the entire facility and will not use an outside service. The staff will have daily checklists that are broken down per position. New checklists will be started every day, and the general manager will inspect the facility throughout the day. The operator will have "mystery shoppers" visit the facility on a monthly basis to inspect whether the staff is meeting the cleaning goals and service standards;
 - e. The facility will have nine individual waste receptacles that will be collected by a waste disposal company at least weekly in accordance with § 735.4(e); and
 - f. Each play park will have a "poopee" patch, which is a designated spot for dogs to defecate. Excrement will go through the "grass," down a drain, and out of the building to keep the facility smelling fresh and clean. When urine is deposited on the floor, it will be extracted with a commercial scrubber. The floors will be cleaned with a mini-scrubber that scrubs, disinfects, and extracts moisture from the floor.

Public Benefits and Amenities

35. In its decision for the Approved PUD, the Commission found that the project's benefits and amenities, particularly the provision of housing, affordable housing, and neighborhood-serving retail were reasonable for the development of the Subject Property. Since the requested modification seeks no additional zoning flexibility nor requests a change to any of the public benefits identified in Z.C. Order No. 05-22, there is no need for the Commission to re-examine the issue.

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." (*Id.* § 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. (*Id.* § 2409.9.) The proposed modification shall meet the requirements for and be processed as a second-stage application, except for minor modifications and technical corrections. (*Id.*) Accordingly, the Commission treats this modification request as a second-stage PUD application.
3. Pursuant to the Zoning Regulations, the Commission has the authority to approve uses that are permitted as special exceptions and would otherwise require approval by the BZA. (*Id.* § 2405.7.)
4. The BZA is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008), to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the BZA, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to adversely affect the use of neighboring properties in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (See 11 DCMR § 3104.1.) Pursuant to § 735, the BZA may grant special exception relief to allow for an animal boarding use, subject to certain requirements.
5. For the reasons stated in Findings of Fact 26 through 34, the Commission finds that the proposed animal boarding use will meet specific requirements of § 735. Further, the

Commission finds that the proposed use will meet the general special exception requirements stated in § 3104.1. The animal boarding use will produce no noise or odors objectionable to adjacent properties, including the residential units in the apartment house above. The Applicant will fully mitigate all noise impacts associated with the use through the implementation of sound-proofing design techniques and operational measures that will ensure that residents of abutting units cannot hear the dogs below. In addition, the Commission finds that the Applicant will fully mitigate all odors associated with the use by utilizing commercial cleaning equipment and supplies and undertaking detailed cleaning schedules and tasks.

6. Approval of the PUD Modification is appropriate because the proposed use is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the proposed use 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.
7. Granting the PUD modification neither changes any of the underlying factual and legal issues upon which the Commission granted the original application nor requires any additional zoning flexibility. Therefore, the PUD as modified continues to meet all of the requirements of Chapter 24 of the Zoning Regulations.
8. As to Mr. Heier's concerns over forum shopping, the Commission notes that as a result of the amendments made § 735, the earlier decision by the BZA became moot. The Applicant was entitled to bring a new application and rather than have the View 14 property subject to one order issued by the Commission and another by the Board, chose to modify the existing PUD so that all of its uses would be governed under a single case. The Commission finds this both appropriate and desirable.
9. 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 the affected ANC. In this case, ANC 1B voted unanimously to support the modification Application and recommended that the Commission approve the Application. The Commission finds this advice to be persuasive.
10. 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 finds OP's recommendation for approval to be persuasive.
11. 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 the Application to modify a planned unit development for the property located at 2303 14th Street, N.W. (Square 2868, Lot 155). Z.C. Order No. 05-22 is modified by adding the following new conditions:

17. The Applicant is permitted to establish an animal boarding use, specifically a dog day care center use, in a portion of the retail space on the ground floor of the project;
18. The dog day care center shall be designed in accordance with the plans and materials submitted by the Applicant and marked as Ex. 15A of the record;
19. The dog day care center shall permit dog walking on the 14th Street commercial strip only and not on the adjoining residential streets;
20. Employees of the dog day care center shall wear an identifiable shirt or uniform;
21. The dog day care center operator shall require its customers to sign an agreement that obligates them to obey all traffic and parking regulations; and
22. If necessary to mitigate adverse traffic impacts, the dog day care center operator shall provide concierge service to retrieve dogs from vehicles on weekday mornings (Monday through Friday) between 7:30 a.m. and 8:30 a.m.

On April 20, 2015, upon the motion of Vice Chairman Cohen, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the Application at the close of its hearing 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 June 8, 2015, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner Miller, the Zoning Commission took final action to **ADOPT** 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 July 3, 2015.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING