

## MEMORANDUM

**TO:** District of Columbia Zoning Commission

**FROM:** Stephen Cochran, Development Review Specialist  
*JLS.*  
 Jennifer Steingasser, Deputy Director Development Review & Historic Preservation

**DATE:** October 1, 2021

**SUBJECT:** Office of Planning (OP) Report on Application ZC 06-10F -- Request for a Modification of Consequence to approved PUD 06-10, Arts Place at Fort Totten

### I. RECOMMENDATION

After a review of the request, including a comparison of the proposed temporary uses against the approved Orders (ZC 06-10 through 06-14E) the Office of Planning (OP) **does not object** to the request to consider the applicant's request as a **Modification of Consequence** under Subtitle Z § 703 and recommends that the modification be **approved**.

OP does, as is noted in Section III (page 4) of this report, strongly encourage the applicant to provide dedicated affordable units among the 23 additional units being proposed. OP also requests the submission of an additional illustration to better understand the impact of the proposed Block B façade color changes on the relationship to the completed Block A building.

### II. BACKGROUND

In Order 06-10, effective January 15, 2010 the Zoning Commission approved the Morris and Gwendolyn Cafritz Foundation's plans for the construction of a 2,018, 880 gross square foot (GSF), 3.08 FAR development on 16.67 acres of land between the Ft. Totten Metro station and South Dakota Avenue, just south of Riggs Road, N.E. Approval included a related map amendment to what was then the C-2-B zone. The Arts at Fort Totten is to be constructed in four phases and is to contain up to 929 residential apartments and several hundred thousand square feet of retail, cultural and entertainment uses. The site plan is illustrated below.

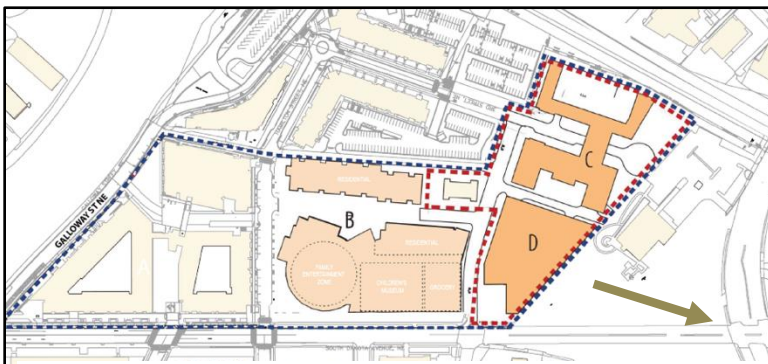
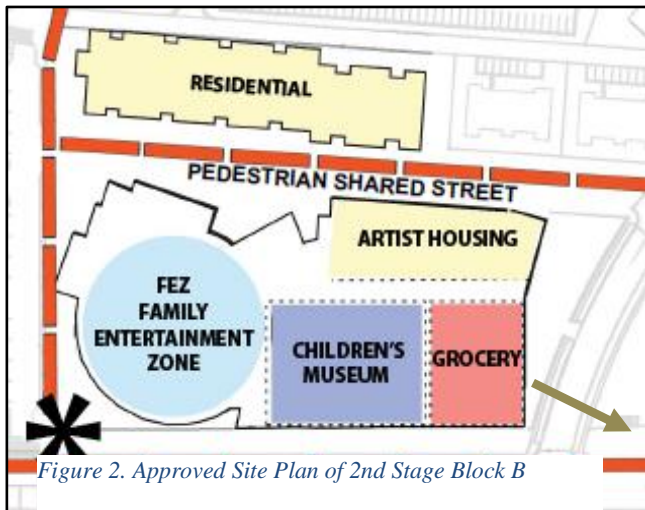


Figure 1. PUD Site Plan, with Completed Building A to Left and Current Application's 2nd Stage PUD Labelled "B"

The 214,209 square foot first phase, at the south end of the site, was a Consolidated PUD and has been completed. It contains 529 residential units, communal functions for recreation and day care, parking and space for approximately 50,000 FAR-countable square feet of retail uses, plus another 50,000 square feet that does not count towards FAR.

Orders 06-10D and E approved a revised plan for the second phase of the PUD which will be across Ingraham Street N.E. from the completed first phase. This Second Stage PUD is labelled “B” in Figure 1 and is illustrated in more detail in Figure 2.



The multiple components of this approximately 500,000 square foot development will be constructed as one building for zoning purposes, bridging a pedestrianized, closed, 4<sup>th</sup> Street. Block B is to contain approximately 271 apartments, 30 of which would be subsidized for artists at 80% MFI for 20 years. The 260,235 non-residential sections are to include a grocery store, a food hall, other retail, a children’s museum and a 150,000 square foot interactive entertainment zone. The non-residential uses would be primarily in the wing adjacent to South Dakota Avenue, in what the applicant refers to as the Family Entertainment Zone or “FEZ”.

### III. REQUESTED MODIFICATIONS

In the current application, the applicant is requesting a Modification of Consequence to:

- Add a northern extension to the wing on the west side of the former 4<sup>th</sup> Street, to contain an additional 23 market-rate residential units. This would be on the right side of the wing labelled “residential” in Figure 2 above;
- Change towards more neutral colors on the façade of the western “residential” wing;
- Relocate the dog park;
- Reduce the commercial square footage by 33,500 square foot (a13%, reduction) and modify the internal layouts and space allocations;
- Eliminate an open-air, stone-faced gazebo (a.k.a the “fort”) and the enlargement of the adjacent plaza;
- Change the interactive entertainment provider from Meow Wolf to the Venue Group<sup>1</sup>;
- Reduce the height of the “drum” in the FEZ area by 22’6”;
- Add a terrace level above the South Dakota Avenue retail uses;
- Reduce the number of parking spaces from 717 to 494, a 34% reduction for this phase, consistent with what the applicant states is the changed parking demand accompanying the change in FEZ’s interactive entertainment provider (Exhibit 2, page 5 and Exhibit 2E);
- Add one more loading berth accessed from of the closed 4<sup>th</sup> Street.

<sup>1</sup> While Meow Wolf was not mandated by a PUD Order, it was widely discussed with the Zoning Commission and the community. OP is not clear about the status of the Venue Group’s commitment and whether a specification of this provider would be part of a proposed Order;

#### IV. ANALYSIS OF MODIFICATION REQUEST

Subtitle Z § 703 provides for Zoning Commission consideration of a modification to an approved PUD as follows:

##### **703 CONSENT CALENDAR – MINOR MODIFICATION, MODIFICATION OF CONSEQUENCE, AND TECHNICAL CORRECTIONS TO ORDERS AND PLANS**

703.3 *For the purposes of this section, the term “**modification of consequence**” shall mean a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance*

703.4 *Examples of **modification of consequence** include, but are not limited to, 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.*

703.5 *For the purposes of this section, a “**modification of significance**” is a modification to a contested case order or the approved plans of greater significance than a modification of consequence. Modifications of significance cannot be approved without the filing of an application and a hearing pursuant to Subtitle Z § 704.*

703.6 *Examples of **modifications of significance** include, but are not limited to, a change in use, change to proffered public benefits and amenities, change in required covenants, or additional relief or flexibility from the zoning regulations not previously approved.*

A “modification of consequence” requires the establishment of a timeframe for the parties in the original proceeding to file comments on the request and the scheduling of a date for Commission deliberations, while a more substantive “modification of significance” requires the holding of a public hearing in accordance with Subtitle Z § 704.

The requests appear to meet the criteria for a Modification of Consequence. The proposed modifications would not change the material facts upon which the Commission based its previous approvals of the project, or the conditions incorporated in the Orders 06-10D and 06-10E. The changes would not affect the project benefits or proffers.

- The project would still contain the same mix of uses approved in the previous Orders, but with different allocations of space, including a reduction in entertainment-related space and an increase in residential units;
- A reduced height of the “drum” on South Dakota Avenue and a less intensive type of interactive entertainment use may reduce the project’s impact on the neighborhood, depending on the District Department of Transportation’s (DDOT’s) assessment of the Trip Generation Analysis (Exhibit 2E);
- The changed location of the dog park should not have an impact;
- The addition of another terrace atop the South Dakota retail space should help to enliven the pedestrian environment and, because it would be across South Dakota Avenue from public buildings, should have no impact on existing residences;
- The stone gazebo (which the applicant refers to as the “fort”) had been somewhat controversial during hearings. Its elimination would likely enhance the nearby pedestrian plaza;
- The changes to more neutral façade colors would not be significant;
- The expansion of the western wing would include land in this Second Stage PUD that would have been developed in a future phase of the PUD.

- The addition of 23 more apartments in this phase advances the construction of some of the residential units previously approved for the overall PUD<sup>2</sup>.

While the additional 23 units are generally positive, OP is concerned that none of them would be dedicated affordable units. The Zoning Commission determined in Order 06-10D that because the PUD was approved prior to the effective date of the Inclusionary Zoning (IZ) regulations, the applicant was not required to build any IZ units unless the PUD's approved 929 unit total is exceeded.

OP notes that in the 11 years since the PUD was first approved, the Commission has approved two major changes and one minor change to the use and configuration of the Block B approved in the Preliminary PUD. The Commission has also granted the PUD considerable leeway for filing and construction deadlines. The application for the last development parcel in the PUD is not due until December 31, 2030 – 20 years after the PUD was first approved.

December 2030 would be 24 years since the IZ regulations were approved and over 22 years since their effective date. The pressure on the affordable housing stock has only increased since The Arts at Fort Totten was first approved. The applicant is within its legal rights not to build IZ units until the 930<sup>th</sup> unit is constructed. However, OP strongly encourages the applicant to consider the provision of some IZ units. The Office of Planning State Data Center prepared a survey of affordable housing by ANC ([DCIncome-RestrictedAffordableHousingbyANC](#)) and the figures as of 2018 show that ANC 5A had only 0.2% of the District's income restricted affordable housing and that only 1.6% of the total housing in ANC 5A is considered income restricted affordable.

## **V. OTHER GOVERNMENT AGENCY COMMENTS**

The applicant circulated the application to the District Department of Transportation (DDOT). DDOT staff has informed OP that it has no objection to the revised Trip Generation Analysis (Exhibit 2E) at the additional loading berth, or the proposed reduction in parking.

## **VI. ANC COMMENTS**

The applicant has circulated the application to ANC 5A, in which the site is located, and to the adjacent ANC 4B. Both ANCs were parties in the case. At Exhibit 4, ANC 5A has filed a letter in support of the application and its consideration as a Modification of Consequence. There were no other ANC comments in the file at the time OP completed this report.

## **VII. COMMUNITY COMMENTS**

The applicant also circulated the application to the Lamond Riggs Citizen Association, the only other original party in the case. There were no comments from the citizen association or from other members of the public in the file at the time OP completed this report.

---

<sup>2</sup> If the 23 units are approved, Blocks A and B will contain 814 of the total PUD's approved 929 units. The existing PUD Orders would permit only 115 additional units to be built on the PUD's two large remaining C-2-B sites.