

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-11P

Z.C. Case No. 06-11P

Hillel at The George Washington University

(Modification of Significance of Z.C. Order 06-11L and Request for Further Special Exception Relief from the Penthouse Setback Requirements @ Square 42, Lots 820 & 840)

July 30, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on July 16, 2018 to consider the application filed by Hillel at The George Washington University (“Applicant” or “Hillel”) requesting approval of a Modification of Significance to Z.C. Order No. 06-11L (“Order”) and the approved plans pursuant to 11-Y DCMR § 704 and further special exception relief from the penthouse setback requirements pursuant to 11-C DCMR § 1504 and 11-X DCMR § 901 at the property located at 2300 H Street, N.W. (Square 42, Lots 820 and 840) (“Property”).

The public hearing was conducted in accordance with the provisions of 11-Z DCMR Chapter 4.

SUMMARY ORDER

BACKGROUND

Z.C. Order No. 06-11L¹ granted certain variance and special exception approval in order to permit the construction of a new four-story building that included worship space, a dining facility, and academic and student life space. The Commission granted area variance relief from the floor area ratio (“FAR”), lot occupancy, rear yard, and parking requirements of the Zoning Regulations as well as special exception approval from the roof structure setback requirements (penthouse). In the near term, Hillel proposed to lease two floors of the Project to the University for University-related uses. To authorize the University use, the Commission also approved an amendment to the 2007 Foggy Bottom Campus Plan approved in Z.C. Order No. 06-11/06-12 (“Campus Plan”) as well as a further processing of the Campus Plan. In Z.C. Order No. 06-11M, the Commission also

¹ The original application was filed under the Zoning Regulations (Title 11, DCMR) which were then in effect (the “1958 Zoning Regulations”) but which were repealed on September 6, 2016 and replaced with new text of Title 11, DCMR (the “2016 Regulations”). Other than the description of the original application and its caption, the other references in this Order to provisions contained in Title 11 DCMR are to the 2016 Regulations. The repeal of the 1958 Zoning Regulations and their replacement with the 2016 Regulations has no effect on the vesting and validity of the original application.

approved a minor modification to the related campus-wide first-stage PUD in order to effectuate the University use within the Project.

The approval in Z.C. Case No. 06-11L was subject to the following five conditions:

1. The Project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit 73A of the record, as modified by the guidelines, conditions, and standards herein;
2. The University shall be permitted to use the third and fourth floors of the Project for student life and academic uses only, and shall refrain from using the space within the Project for faculty and staff offices except for staff offices directly related to the uses within the Project;
3. The University shall forgo the development of approved development on Site 77D;
4. During construction of the Project, Hillel shall abide by the provisions of the Construction Management Plan marked as Exhibit 73B of the record; and
5. For the life of the Project, the Applicant shall use trash bins rather than carts, unless DDOT specifically approves the use of carts through the public space process.

Portions of the Order related to the lot occupancy and rear yard variances were appealed to the D.C. Court of Appeals.² Parties to the underlying zoning case, St. Mary's Episcopal Church (“St. Mary's” or “Church”) and the West End Citizens Association (“WECA”) petitioned the D.C. Court of Appeals (“Court”) to reverse the area variances granted for lot occupancy and rear yard.³ On December 7, 2017, the Court issued an opinion affirming the Order of the Commission.

MODIFICATION OF SIGNIFICANCE

Pursuant to 11-Y DCMR § 704.1, any request for a modification that does not meet the criteria for a minor modification or modification of consequence requires a public hearing and is a modification of significance. On April 25, 2018, the Applicant submitted a request for a modification of significance to the relief previously approved by the Z.C. Order No. 06-11L. The Applicant’s request complies with 11-Y DCMR § 704, which provides the Commission’s procedures for considering requests for modifications of significance.

Briefly, the Applicant revised the massing of the Project to eliminate the need for three areas of zoning relief (FAR, lot occupancy, and rear yard area variances) that were approved in the Order. Hillel proposed to revise the architectural design and materials to be more appropriate with the

² *St. Mary’s Episcopal Church, et al., Petitioners v. District of Columbia Zoning Commission, Respondent, and Hillel at The George Washington University, Intervener*. No. 16-AA-491. Argued June 14, 2017. Decided December 7, 2017.

³ The Petitioners did not appeal the area variances granted for FAR, parking, or the special exception granted for the penthouse setback.

revised building massing and comply with the public space restrictions on bay window projections. The Applicant proposed to modify the penthouse design to accommodate the reduced building footprint. The revised penthouse requires additional special exception approval from the setback requirements.

Finally, the Applicant seeks to modify the conditions of approval included in Z.C. Order No. 06-11L to reflect the revised plans, the new Construction Management Agreement and flexibility for both the color of the exterior metal panel and the signage. Accordingly, the application constituted a modification of significance.

Notice. Pursuant to 11-Z DCMR § 302.6, the Applicant provided the required Notice of Intent (“NOI”) on November 30, 2017. The Applicant also served the application on all parties to the original proceeding as required by the Regulations. Notice of the application and the public hearing was provided by the Office of Zoning in accordance with the Regulations.

Party Status. The Applicant and ANC 2A were automatically parties in this proceeding. On May 31, 2018, WECA filed an application for party status in support. (Exhibit [“Ex.”] 12-12A.) On June 7, 2018 St. Mary’s filed an application for party status in support. (Ex. 13.) At the public hearing, the Commission granted both requests for party status.

Reports. ANC 2A submitted a report dated July 2, 2018, in support of the application. The ANC report indicated that at a regularly scheduled, properly noticed public meeting on June 20, 2018, at which a quorum was present, the ANC voted 7-0-0 to support the application. (Ex. 17.)

OP submitted a report on July 6, 2018, recommending approval of the Application. (Ex. 18.) DDOT submitted a report dated June 27, 2018, stating that it had no objection to the granting of the request subject to an existing condition regarding trash. (Ex. 16.) At the hearing, WECA requested that the existing bus stop at the intersection of 23rd and H Street be retained. The Applicant indicated that it had no objection to retaining the bus stop in its current location if approved by DDOT.

Burden of Proof. As set forth in 11-X DCMR § 901.2 and 11-Y DCMR § 704, the Commission directed the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception and a modification of significance. With its application, the Applicant submitted a statement including the nature of, reasons, and grounds for the modification of significance, architectural plans and elevations, and a description of the Project and relief being requested and noted how it met the burden of proof for special exception relief.

Based upon the record before the Commission and having given great weight to the ANC and OP reports, the Commission concludes that the Applicant has met the burden of proof, pursuant to 11-C DCMR § 1504 and 11-X DCMR § 901, that the requested special exception relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Commission further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. Based upon the record before the Commission and having given great weight the OP and ANC reports filed in this case, the Commission also concludes that the Applicant has also met its burden of proof under 11-Y DCMR § 704 for a modification of significance to Z.C. Case No. 06-11L.

As noted, the parties to the case were the ANC, the Applicant, and two parties in support (WECA and St. Mary's). No parties or persons in opposition presented testimony or evidence in opposition. Accordingly, a decision by the Commission to grant the request would not be adverse to any party and therefore an order containing full Finding of Facts and Conclusions of Law need not be issued pursuant to D.C. Official Code § 2-509(c) (2012 Repl.). Pursuant to 11-Z DCMR § 101.9, the Commission has determined to waive the requirement of 11-Z DCMR § 604.7, that the order of the Commission be accompanied by Findings of Fact and Conclusions of Law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification of significance of the Commission's approval in Application No. 06-11L is hereby **GRANTED** as follows. The conditions listed in Z.C. Order No. 06-11L are revised as follows with new text shown in **bold** and underlined text and deletions in ~~striketrough~~ text:

1. The Project shall be developed in accordance with the plans and materials submitted by the Applicant marked as **Exhibits 15A1, 15A2, 15A3, 15A4, 15A5, 20A, and 20B** ~~Exhibit 73A~~ of the record, as modified by the guidelines, conditions, and standards herein;
2. The University shall be permitted to use the third and fourth floors of the Project for student life and academic uses only, and shall refrain from using the space within the Project for faculty and staff offices except for staff offices directly related to the uses within the Project;
3. The University shall forgo the development of approved development on Site 77D;
4. **Prior to, during, and after** ~~During~~ construction of the Project, Hillel shall abide by the provisions of the **14-page** Construction Management **Agreement Plan** marked as Exhibits **7D1 and 7D2** ~~73B~~ of the record **instead of the 4-page Construction Management Plan (Exhibit 73B in ZC Order 06-11L)**; ~~and~~
5. For the life of the Project, the Applicant shall use trash bins rather than carts, unless DDOT specifically approves the use of carts through the public space process; **and**
6. **The Applicant shall have flexibility with the design of the Project in the following areas:**
 - (a) **To choose between two similar accent colors for the exterior metal panel as shown on the approved architectural drawings.**
 - (b) **To vary the font, message, logo, and color of the proposed signage, provided the maximum overall dimensions and signage materials do not change from those shown in the hearing presentation.**

In all other respects, Z.C. Order No. 06-11L remains unchanged.

On July 30, 2018, upon the motion of Commissioner Shapiro, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*, that is on September 7, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commissioners approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING