

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 07-18F
Z.C. Case No. 07-18F
Jemal's Up Against the Wall
(Modification of Consequence for Consolidated PUD
@ Square 347, Lot 23 – 1000 F St., N.W.)
July 29, 2019

Pursuant to public notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public meeting on July 29, 2019 at which the Commission considered the application of the Jemal’s Up Against the Wall (the “Applicant”) for a Modification of Consequence (the “Application”) of the consolidated planned unit development (a “PUD”) approved by Z.C. Order No. 07-18 (the “Original Order”), as amended by Z.C. Order No. 07-18D, for 1000 F Street, N.W. (Square 347, Lot 23; 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 (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

Prior Approvals

1. By the Original Order dated April 14, 2008, the Commission granted consolidated approval for a PUD (the “Approved PUD”) for the Property¹ located at 1000 F Street, N.W. to construct an 11-story office building with a maximum building height of 120 feet and density of 8.3 floor area ratio (“FAR”) totaling approximately 97,872 square feet of gross floor area, including 7,813 square feet of retail uses (the “Building”).
2. By Z.C. Order Nos. 07-18A and 07-18B, the Commission approved two time extensions of two years each of the validity of the Original Order.
3. By Z.C. Order Nos. 07-18C and 07-18E, the Commission approved minor modifications to extend the deadline for satisfying Condition 4 of the Original Order.

¹ The Original Order covered Lots 18, 19, 828-821, and a small portion of the alley to be closed in Square 347. These lots were subsequently consolidated into Lot 23 by the plat recorded with the Office of the Surveyor in Subdivision Book 208 at page 75).

4. By Z.C. Order No. 07-18D, the Commission approved a modification of the Original Order to reduce the number of parking levels from four to two and make minor design modifications to the Building.

Parties

5. The only party to the Z.C Case No. 17-18, other than the Applicant, was Advisory Neighborhood Commission (“ANC”) 2C, the affected ANC pursuant to Subtitle Z § 101.8.

The Application

6. On June 21, 2019, the Applicant filed the Application requesting a Modification of Consequence to allow the installation of two new rows of windows on the third and fourth floors of the southern façade of the Building, as illustrated by Exhibit (“Ex.”) 1E.
7. The Applicant served the Application on June 21, 2019 to ANC 2C and the Office of Planning (“OP”), as attested by the Certificate of Service submitted with the Application. (Ex. 1.)
8. OP submitted a report on July 22, 2019, stating that the Application should be classified as a Modification of Consequence and that OP recommended approval of the Application (the “OP Report”). (Ex. 4.)
9. ANC 2C submitted a written report stating that, at a regularly scheduled and duly noticed meeting held on July 9, 2019, with a quorum present, the ANC voted to support the Application (the “ANC Report”). (Ex. 5.) The ANC Report did not express any issues or concerns with the Application.

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 redesign or relocation of architectural elements” as an example of a Modification of Consequence.
4. 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 redesign architectural elements of the plans approved by the Order, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).

5. 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.
6. The Commission concludes that because ANC 2C, the only party other than the Applicant to the Approved PUD, 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 the July 29, 2019 public meeting.
7. The Commission concludes that the modification proposed by the Application is consistent with the Approved PUD because the Application does not change the project amenities and public benefits of the Approved PUD, nor create unacceptable impacts and is not inconsistent with the Comprehensive Plan.

“Great Weight” to the Recommendations of OP

8. D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8 require the Commission to give “great weight” to the recommendations contained in the OP Report.
9. The Commission finds the OP Report’s recommendations that (i) the Application qualified as a Modification of Consequence, and (ii) the Application should be approved, persuasive and concurs in that judgment.

“Great Weight” to the Written Report of the ANC

10. D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.) and Subtitle Z §406.2 require the Commission to give “great weight” to the issues and concerns contained in the written report of an affected ANC, in this case ANC 2C. 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. 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 recommendation to approve the Application, with no issues or concerns, persuasive and concurs in that judgment.

DECISION


At its public meeting on July 29, 2019, in consideration of the case record and Findings of Fact and Conclusions of Law herein, upon the motion of Chairman Hood, as seconded by Vice Chair Miller, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a Modification of Consequence to the PUD approved by Z.C. Order No. 07-18, as amended by Z.C. Order No. 07-18E, for 1000 F Street, N.W. (Lot 23 in Square 347), 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),

subject to the plans prepared by Shalom Baranes Associates, dated June 13, 2019, and titled “Modification to PUD Approved # ZC 07-18,” marked as Exhibit 1E of the record.

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on August 23, 2019.

BY ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING