

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

Steven E. Sher
Director of Zoning and Land Use Services
202.663.7278
Steven.sher@hklaw.com

January 2, 2015

VIA IZIS

D.C. Zoning Commission
Suite 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: City Market at O Street - Modification to a Consolidated PUD
Zoning Commission Case No. 07-26F
Applicant's Proposed Findings of Fact and Conclusions of Law

Dear Members of the Commission:

Attached please find the Applicant's proposed findings of fact and conclusions of law in the above referenced application. The Applicant thanks the Commission for its time and attention to the application and requests that the Commission take final action to approve the application at its earliest convenience.

Should you have any questions or need additional information, please do not hesitate to have Office of Zoning staff contact me.

Sincerely,

HOLLAND & KNIGHT LLP

Steven E. Sher
Steven E. Sher *n/mo, Jr.*

Director of Zoning and Land Use Services

Enclosure

cc: Jennifer Steingasser, Office of Planning (via E-Mail)
Karen Thomas, Office of Planning (via E-Mail)
Advisory Neighborhood Commission 6E (via E-Mail)

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 07-26F

Z.C. Case No. 07-26F

City Market at O Condo LLC

(Modification to Consolidated Planned Unit Development)

January __, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on December 15, 2014, to consider an application from City Market at O Condo, LLC (the "Applicant") for approval of a modification to a Consolidated Planned Unit Development (the "PUD") (the "Application") for development of the last phase of the redevelopment of the property bounded by 7th, 9th, O and P Streets, N.W., as approved in Zoning Commission Order No. 07-26 ("Order No. 07-26") under Chapter 24 of the District of Columbia Zoning Regulations, 11 DCMR ("Zoning Regulations"). The project site includes a portion of Lot 32 in Square 398 (the "Site"). 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.

FINDINGS OF FACT

Application, Parties, and Hearing

1. On June 26, 2014, the Applicant filed the Application, including architectural plans and drawings, for approval of a modification to the Consolidated PUD for the Site as approved by Order No. 07-26 (the "PUD Modification Submission"). (Exhibit ["Ex."] 1).
2. This application was originally submitted as a request for approval of a minor modification to the PUD, in accordance with the provisions of §3030 of the Zoning Regulations.
3. At its public meeting held on July 17, 2014, the Commission determined that the request was not a minor modification and that a public hearing would be required. The Commission voted to set the matter for hearing.

441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

4. The Applicant filed a Prehearing Submission on August 25, 2014, including a Prehearing Statement and supporting exhibits. (Exs. 7-10). The Applicant then filed additional material in its Supplemental Prehearing Submission on November 25, 2014, (the Supplemental Prehearing Submission") consisting of fully re-issued plans and elevations (the "Supplemental Plans"). (Exs. 16-17).
5. A Notice of Public Hearing was published in the *D.C. Register* on September 19, 2014. The Notice of Public Hearing was mailed to all property owners within 200 feet of the Site as well as to Advisory Neighborhood Commission ("ANC") 6E.
6. The Commission held a public hearing on the Application on December 15, 2014. The parties to the case were the Applicant as well as ANC 6E, the ANC within which the Site is located.
7. The Applicant presented the following witnesses: Richard Lake, representing the Applicant; and Robert Sponseller, architect with the firm of Shalom Baranes Associates. Mr. Sponseller was accepted as an expert in architecture.
8. The Office of Planning ("OP") submitted a report dated December 1, 2014 ("OP Report"), in support of the Application. (Ex. 18). The OP Report stated that the changes in the revised plans, relative to the upper level of the West Building, are not inconsistent with the Comprehensive Plan and would not change the material facts upon which the Commission based its original approval for the site's overall development. In its testimony at the hearing, OP reiterated its support for the Application.
9. The District Department of Transportation ("DDOT") submitted a report dated December 4, 2014 ("DDOT Report") stating that it did not object to the proposed modification. (Ex. 19).
10. ANC 6E submitted a letter dated December 5, 2014, indicating that with a quorum present, ANC 6E voted 6-0-0 to support the Application. (Ex. 24).
11. There were no persons or parties in opposition to the Application.
12. At the conclusion of the hearing, the Commission took proposed action to approve the Application.
13. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by delegated action dated January __, 2015, found that the Application would not have an adverse effect on federal interests nor be inconsistent with the Comprehensive Plan for the National Capital. (Ex. __).

14. The Commission took final action to approve the Application at its public meeting held on January __, 20145

The Site and the Area

15. The subject property includes Lot 32 in Square 398, which encompasses all of the property within the block bounded by 7th, 9th, O and P Streets, N.W. The overall record lot contains approximately 149,600 square feet of land area. The record lot has been divided into a number of assessment and taxation lots and air rights lots. The portion of the property which is the subject of the specific amendments approved in the Application is located west of the former right-of-way of 8th Street..
16. The Site is zoned C-3-C by virtue of Order No. 07-26.

Summary of Modifications

17. The modifications all relate to the building noted on the approved plan as West Residential A (the "Building"), the portion of the project located at the corner of 9th and P Streets. The modifications now proposed are as follows:

A. Addition of Bays on the Interior Courtyard

The applicant proposes to add bays on the east side of the interior courtyard to visually activate this open space amenity. Previously, the east wall of the Building facing the courtyard was depicted as an unarticulated block. As now proposed, 4 bays would extend approximately 7 feet from the interior east façade and would not be visible from the P Street side of the building.

B. 2% Height Increase to Utilize Sustainable Central Plant

Utilizing the environmentally advanced central plant constructed in the previous phase to supply utilities for the proposed Building reduces emissions, lowers energy costs for residents, and enables provision of significant rooftop amenity space and outdoor access uninterrupted by mechanical equipment. However, the distance between the centralized mechanical system and the proposed Building requires larger piping over top floor ceilings to properly serve the new Building spaces. A 2% height increase will accommodate the space needed for the larger piping. The respective proposed heights to accommodate this technical requirement are depicted in the attached exhibit. The applicant does not propose to increase the overall height of the building beyond this 2% request.

- C. Change Roof Structure to Increase Accessibility to the West Rooftop and Amenities while Eliminating Need for Previously Approved Non-Compliant Roof Setback

The applicant proposes to enable both elevators of the west building to access the rooftop and its amenities; the original design did not envision elevator access to the rooftop. To enable this expanded accessibility, the penthouse at the elevator core is proposed to be raised to allow for enough overrun for both elevators. As indicated in Sheet A.08 (Ex. 17), the height of roof structure No. 4 on West Residential A was approved at elevation 100. In order to provide ADA accessible roof access from both elevators, the permitted height of the roof structure at the elevator core only is requested to be increased to elevation 108.5, as indicated in Sheet A.09 (Ex. 17).

The design of the proposed structure and elevator core location has been modified to allow for the 1:1 setback requirement to be met. As indicated in Sheet A.08 (Ex. 17), the roof plan approved by the Zoning Commission in the PUD permitted a non-compliant roof structure setback for roof structure 4 to be constructed with less than the normally required 1:1 setback along the west side of the penthouse. The currently proposed design modifications now allow for the 1:1 setback requirement to be fully met. The relocation of the elevator core also allowed roof structure 4 to be set back 4' so that the entire roof structure is now compliant with the 1:1 zoning setback, making the roof structure less noticeable from public view than even in the originally approved PUD.

- D. Extend Portion of Eighth Floor

To better integrate the appearance of approved roof structure 6 into the overall façade and to enable a more graceful transition in roof elevations for the planned rooftop amenities and green areas, the owner proposes to extend the 8th floor of West Residential A along the north to south wing of the Building parallel to 9th Street, as depicted in Sheets A.08 and A.09 (Ex. 17). As originally approved, the height of that portion of the Building was at 72 feet above the measuring point, with the height of roof structure 6 along the south end of the 9th Street wing approved at 82 feet above the measuring point, as depicted in the wall section on Sheet A.10 (Ex. 17). As now proposed, the height for this 9th Street portion of the Building, as depicted in Section W-4, would be 82 feet above the measuring point, no higher than the height for the previously approved roof structure 6 at this location. The extension would be set back the same distance from 9th Street (14 feet from the edge of the 7th floor below) and would extend no further than the southern face of the previously approved roof structure, as depicted in roof plan Sheet A.09 (Ex. 17).

The proposed modification to Section W-4 would enable a more graceful transition in roof elevations from the approved eastern portion of the building for the proposed rooftop amenities. The extension of the 8th floor on the 9th Street wing would still be below the maximum height permitted and constructed on the existing portions of the project west of the former right-of-way of 8th Street (82 feet as compared to 91.8 feet). Additionally, the extension of the 8th floor occupies only a portion of the Building and is setback 14 feet from the edge of the 7th floor below, thereby reducing the appearance and potential impact from the street.

To better achieve harmonious overall building proportions, the applicant proposes slight modifications to the setback along 9th Street. The 8th and 9th floors were setback approximately 29 feet from the edge of the 7th floor below along the 9th Street side of the Building. Under the proposed modifications, the 8th and 9th floors would be setback 23 feet from the edge of the 7th floor below. As depicted in the massing comparisons on Sheets A.03, A.04, and A.05 (Ex. 17), the modifications have minimal impact on views of the Building from the public street as compared to views of the building under the previously approved PUD, even as it helps to better conceal the mechanical roof structure 4.

The proposed modification would slightly increase the floor area of West Residential A from the original design. However, the overall FAR of the project would not increase beyond the approved PUD.

18. None of the proposed changes increases the FAR above the approved 5.15 FAR or increases the number of residential units above the approved range of 580-680. In all respects, including the overall height, gross floor area, number of units, yards, courts, parking and loading, the PUD will remain as approved by the Zoning Commission.
19. The 2% increase in height for the P Street wing will match the constructed height of the other portions of the Building, and is necessary to accommodate redesign of the mechanical components of the Building to include a central plant constructed on the portion of the PUD east of the former 8th Street right-of-way, which plant services the entire PUD.

Compliance with PUD Standards

20. The Application complies with the standards for a PUD set forth in Chapter 24 of the Zoning Regulations.
21. Substantial portions of the development have already been constructed and are operational for the benefit of the community. The Giant grocery store, affordable senior housing building, hotel and majority of the residential buildings are open and occupied.

Additional community benefits that have been provided include but are not limited to the following:

- A. Historic preservation: The O Street Market was substantially preserved and adaptively reused to integrate Giant Food into the overall project while providing the Shaw community the District's largest grocery store with a breadth of offerings that are unique to this location. The project has received numerous accolades and awards, including "2014 Best Overall Store Design" by Progressive Grocer magazine and the "2014 Vision Award" from The Committee of 100 on the Federal City;
- B. Affordable housing: The completed senior building has 90 units of affordable housing, with 18 units at 50% of AMI and 72 units at 60% of AMI, which exceeds the affordable housing required by Zoning Commission Order No. 07-26C, by a total of 10 units and by the depth of affordability (18 units @ 50% AMI) ;
- C. Employment and training opportunities: 212 of 404 new hires were DC residents. Additionally, provided willing applicants access to job preparedness and laborer follow-up training provided by Living Classrooms;
- D. Environmental benefits: Incorporated a significant number of low impact development measures designed to promote environmental sustainability and mitigate development impacts on the environment such as a central HVAC and mechanical plant to service all residential and commercial components of the project; and
- E. Direct contributions to community resources: Provided financial contributions to the District Department of Parks and Recreation, residential tenant associations, and other community institutions.

Upon construction, West Residential A will complete all components proposed under the PUD.

- 22. These public benefits and project amenities have not changed with this Application. Accordingly, the Commission's finding that the relative value of the project amenities and public benefits offered is sufficient given the degree of development incentives requested and any potential adverse effects of the overall project, do not change
- 23. The modifications have been evaluated under the PUD guidelines for the C-3-C District. The density of the project has not changed and is as approved in Order No. 07-26. The density is less than what is permitted as a matter-of-right and for a PUD within the C-3-C

District. The maximum height has changed by only 2%, to accommodate the utility runs for the central plant.

24. The Application has been evaluated by the relevant District agencies and has been found to have no unacceptable adverse impact. The Commission finds that the modifications to the PUD will have a positive impact on the city and will have no unacceptable adverse impacts.
25. In Order No. 07-26, the Commission found that the PUD advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan. The Commission finds that the modifications proposed in this application do not change these findings and that such modifications are not inconsistent with the Comprehensive Plan of 2006.

Office of Planning

26. In the OP Report, and through testimony presented at the public hearing, OP recommended approval of the Application. (Ex. 18).

District Department of Transportation

27. DDOT filed the DDOT Report summarizing DDOT's assessment of the impacts of the Application on the District's transportation network and stated that it did not object to the Application.

ANC 6E Report

28. By letter dated December 5, 2014, ANC 6E stated that it voted to support the Application by a vote of 6-0-0. (Ex. 24).
29. The Commission afforded the views of ANC 6E the "great weight" to which they are entitled.

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 and approve this application for a modification to the approved Consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. The development of the PUD as modified carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The modification to the Consolidated 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.
6. The number and quality of the project benefits and amenities offered are a more than sufficient trade-off for the flexibility and development incentives requested.
7. Approval of the Application is not inconsistent with the Comprehensive Plan.
8. The Commission is required under Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the affected ANC's recommendations. The Commission has carefully considered ANC 6E's support for the project and has given that support great weight.
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. The Commission has carefully considered OP's support for the project and has given that support great weight.
10. The approval of the Application will promote the orderly development of the Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
11. Notice was provided in accordance with the Zoning Regulations and applicable case law.
12. The Application is subject to compliance with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission **ORDERS APPROVAL** of the application for a Modification to the subject PUD, such that development of the West Residential Building shall be substantially in accordance with the plans marked as Exhibit 17 of the Record. The Applicant shall have flexibility with the design of the PUD in the following areas:

- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
- b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials; and
- c. To make minor refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other applicable approvals.

No building permit shall be issued for the Modified Project until the Applicant has recorded a Notice of Modification in the land records of the District of Columbia.

The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”). This Order is conditioned upon full compliance with those provisions. 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 December 15, 2014, upon the motion of Commissioner Hood, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the Application at the public hearing by a vote of 4-0-1 (Anthony J. Hood, Robert Miller, Peter G. May, and Michael G. Turnbull to approve; Marcie Cohen, not present, not voting).

On January __, 2015, upon the motion of _____, as seconded by _____, the Order was **ADOPTED** by the Zoning Commission at its public meeting by a vote of _____ (Anthony J. Hood, Marcie Cohen, Robert Miller, Peter G. May, and Michael G. Turnbull 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 _____, 2015.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA BENJAMIN BARDIN
DIRECTOR
OFFICE OF ZONING