

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-07A

Z.C. Case No. 14-07A

1250 4th Street (EDENS), LLC and Union Market Apartments, LLC
(Minor Modification of Consolidated Planned Unit Development)

May 9, 2016

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on May 9, 2016 to consider the request of 1250 4th Street (EDENS), LLC and Union Market Apartments, LLC (collectively, the “Applicants”) for a modification of the consolidated planned unit development (“PUD”) approved in Z.C. Case No. 14-07. The property (Lot 9, Square 3587)¹ that is the subject of Z.C. Order No. 14-07 is located in the 1200 block of 4th Street, N.E. (“Property”). The instant Order relates to the “South Parcel Building” and Neal Place extension (i.e., Lots 823-828 and 7006-7013, Square 3587). The public meeting was held in accordance with the provisions of 11 DCMR § 3030 and the Commission considered the application pursuant to 11 DCMR §§ 2400 et seq.

FINDINGS OF FACT

1. Z.C. Case No. 14-07 included a consolidated PUD approval and a first-stage PUD approval. Z.C. Order No. 14-07 (“Order”), which became final and effective on June 8, 2015, approved a consolidated PUD for a building with approximately 465 residential units above approximately 29,042 square feet of retail space on the southern portion of the Property (“South Parcel Building”). The South Parcel Building’s retail and residential components have frontage along 4th Street, S.E., and the building will have a maximum height of 110 feet. A 400-550-space parking garage was also approved as part of the South Parcel Building. Z.C. Order No. 14-07 also approved a Zoning Map amendment for the Property from the C-M-1 Zone District to C-3-C Zone District.
2. The first-stage PUD approval included a building on the northern portion of the Property (“North Parcel Building”) with approximately 165 residential units and approximately 12,000 square feet of retail use, which will have a maximum height of 110 feet. A parking structure with 80-200 parking spaces was also included in the first-stage PUD approval. The first-stage PUD approval is effective until June 8, 2023. The North Parcel Building is not the subject of this Order.

¹ At the time of the issuance of Z.C. Order No. 14-07, the Property was known as Parcels 129/77, 129/95, and 129/96. The Applicants combined these three parcels into one single record lot, Lot 9, and then further created a set of assessment and taxation lots on Lot 9.

3. On April 8, 2016, the Applicants filed an application for a minor modification in accordance with § 3030 of the Regulations. The specific elements of the minor modification are detailed in the record. (Exhibit [“Ex.”] 2, 2C.) The Applicants sought approval of the following modifications to the plans approved in Z.C. Case No. 14-07:
- Façade modifications – The façades have been modified due to permissible changes made to the internal layout of the South Parcel Building.
 - Due to shifts in the quantity and layout of units in the South Parcel Building, the fenestration and balconies have been reconfigured. The proposed 4th Street elevation now contains balconies only on odd floors, as opposed to every floor, and the projection of the balconies has been reduced from four feet to one and one-half foot. Additionally, the South Parcel Building’s western façade has been revised, including the refinements to the fenestration and balconies on the floors above the building’s brick base and the addition of fenestration, louvers, and doors along the ground and second floors. The aesthetics and materials of the modified facades appear the same as those originally approved by Z.C. Order No. 14-07.
 - Due to the changes in the South Parcel Building’s internal configuration, the closed courts along the east and south elevation have been enlarged while the closed courts along the west elevation have been reduced. The original order approved flexibility for the construction of noncompliant courts. The instant minor modification retains such element of court relief, while increasing the degree of relief needed on the three courts on the western façade and decreasing the degree of relief needed along the southern façade, with modified dimensions as shown in the record. (Ex. 2C, p. 5.)
 - The South Parcel Building’s lot occupancy has been increased from 83.6% to 84.5%. There is no maximum lot occupancy in the C-3-C Zone District.
 - Penthouse – The penthouse has been modified in compliance with § 411.24 of the Zoning Regulations. Subsection 411.24 allows for minor modification requests to add habitable penthouse space in a building approved by the Commission as a PUD.
 - The penthouse has been modified to be enlarged from up to approximately 16,834 square feet to up to approximately 22,250 square feet, including habitable space. In addition, two cores have been combined into one, the trellis at the covered pool deck has been reconfigured, and fenestration and doors have been added. The heights of the penthouse have been revised from 13 feet and 18 feet, six inches, to 11 feet, six inches for the habitable penthouse-level height; 17 feet, six inches for an elevator override height;

and 20 feet for the mechanical-level height. A one-to-one setback has been provided from all exterior walls, complying with the penthouse regulations, as shown in the record. (Ex. 2C, pp. 8-9.) The Order approved flexibility to allow for multiple roof structure heights. The instant minor modification would retain such roof structure relief by allowing for a differing height for the elevator override shown in the record. (Ex. 2C, pp. 8-9.)

- The amount of the South Parcel Building's affordable housing has been increased as the result of the habitable space in the penthouse, in compliance with Inclusionary Zoning requirements. The modification of the penthouse, having a habitable area of up to approximately 15,280 square feet, requires a maximum of up to approximately 1,222 square feet of affordable housing (eight percent) at 50% of the Washington, D.C. Area Median Income ("AMI") pursuant to § 2603.2 of the Zoning Regulations. Such amount of Inclusionary Zoning units would be in addition to the Order's initial approval of the Inclusionary Zoning set aside. The additional Inclusionary Zoning units will be distributed throughout the South Parcel Building.
- Loading and parking garage – The design of the parking garage and the loading ramps and drive aisles have been modified. The express ramp originally intended for residential users of the garage has been eliminated and a shared ramp for residential and retail has been provided. Additionally, the width of the drive aisle has been reduced from 24 feet to 22 feet. Similarly, the layout of the garage has been reconfigured as areas such as the bicycle parking area have been relocated and revised on the B1 level. The loading facilities have been rotated from 90 degrees to 30 degrees allow for easier ingress and egress and more favorable vehicular turning radii.
- Timing of Neal Place extension construction – The timing of the construction of the Neal Place "extension" between 3rd and 4th Streets, N.E., has been modified to permit the construction prior to the issuance of the Certificate of Occupancy for the South Parcel Building. Condition B(4) of the Order contained a complex condition that described triggers for Neal Place's construction. Such condition has been deleted and replaced with a simpler condition providing a faster delivery of the "extension".

(Ex. 2-2C.)

4. The Applicants noted that otherwise, the proposed project remains the same as that approved by the Order. No other substantive changes to the benefits and amenities package was incorporated into this modification application. The Order approved a range of 415-510 dwelling units, and the modification provides approximately 430 units. The Order approved a range of 400-550 parking spaces and the modification provides approximately 400-430 spaces. (Ex. 2-2C.)

5. The Applicant served the application on Advisory Neighborhood Commission (“ANC”) 5D.
6. At the Commission's May 9, 2016 public meeting, the Commission approved the Applicants’ minor modification request on its consent calendar, specifically citing the project’s “greater affordable housing requirement” as a beneficial feature. At the public meeting, the Commission voted to approve the application.

AGENCY REPORTS

7. The Office of Planning (“OP”) submitted its report on April 29, 2016. OP recommended approval of the proposed modifications of the approved PUD. OP noted that, “The proposed modifications are generally in character with the original approval, and would overall represent an improvement to the project, particularly with respect to the conditions relating to Neal Place. With the exception of minor court adjustments along the alley, none of the requested modifications would result in new or expanded nonconformities to the Zoning Regulations.” (Ex. 5.)
8. No other agency reports were received nor required in the record.

ADVISORY NEIGHBORHOOD COMMISSION

9. ANC Commissioner Peta-Gay Lewis of District 5D01 submitted a letter into the record on May 6, 2016. This letter noted that the ANC supported the proposed changes, stating “Overall, we support the modifications to the project approved under Z.C. Order No. 14-07 and believe that the proposed revisions constitute a minor modification that can be approved without delay.” (Ex. 6.)

PARTIES AND/OR PERSONS IN SUPPORT OR OPPOSITION

10. There were no other persons or parties in opposition to the PUD modification.

CONCLUSIONS OF LAW

Upon consideration of the record of this application, the Commission concludes that the Applicants’ modifications to the approved plans are consistent with the intent of the previous PUD approval made in the Order. The Commission agrees with the conclusions of OP that the proposed modifications are in many respects an improvement over the original project. The Commission acknowledges the increase in the amount of affordable housing provided by the project and the expediting of the construction of the Neal Place “extension” and finds that the project has been improved as the result of these modifications. The Commission concludes that the proposed modifications are in the best interest of the District of Columbia and are consistent with the intent, purpose, and integrity of the Zoning Regulations and the Zoning Act. The Commission also concludes that the approval of the modification application is not inconsistent with the Comprehensive Plan.

Subsection 2409.9 of the Zoning Regulations authorizes the Commission to approve proposed modifications to an approved PUD that are beyond the limited scope of authority granted to the Zoning Administrator. Furthermore, § 3030 of the Zoning Regulations provides for an expedited “Consent Calendar” procedure, allowing the Commission to make minor modifications and technical corrections to an approved PUD Order without need for a public hearing. Pursuant to § 3030.2, “minor modifications” are those modifications of little or no consequence. The Commission concludes the requested modification can be approved without a hearing because of the minor consequences of the proposed changes. The Applicants have redesigned the interior of the South Parcel Building, resulting in minor exterior modifications, and otherwise implemented the recently adopted penthouse regulations and refined the proposal. The modifications described above do not affect the building height, density, or design concept that was approved by the Commission. Nor does it affect the benefits and amenities offered by the project.

The Commission is required under § 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 issues and concerns raised in the written report of the affected ANC. As noted above, ANC 5D01 submitted a letter in support of this application and the Commission concurs with its opinion. No other ANC correspondence was received nor required.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations. OP recommended approval of this application and the Commission concurs in its recommendation.

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 for a minor modification of the approved consolidated PUD. The approval of this modification incorporates the conditions stated in Z.C. Order No. 14-07 and modifies the conditions as stated below:

Conditions A(1), A(2), and B(3) of the Order are revised to read as follows (new text shown in bold and underlined; deletions shown in strikethrough):

A. PROJECT DEVELOPMENT

1. The South Parcel shall be developed in accordance with the architectural drawings submitted into the record on March 6, 2015 as Exhibits 31A1-31A2 **in Z.C. Case No. 14-07**, as modified by the drawings submitted on March 26, 2015 as Exhibits 40A1-40A4 **in Z.C. Case No. 14-07** and the drawings submitted on April 9, 2015 as Exhibits 46D and 46E **in Z.C. Case No. 14-07, as amended by the plans and materials submitted as Exhibit 2C of Z.C. Case No. 14-07A**, and as modified by the guidelines, conditions, and standards herein (collectively, the "Plans").

2. The South Parcel shall include a mixed-use building containing approximately 384,351 square feet of gross floor area (5.68 FAR) consisting of approximately 29,042 square feet of retail use, approximately 355,309 of residential use with approximately ~~465~~ **430** residential units, and a parking garage containing approximately ~~400-550~~ **430** parking spaces for both commercial parking and accessory parking for the Project, as shown on the Plans.

B. PUBLIC BENEFITS

3. For so long as the project exists, and as required by the Inclusionary Zoning (“IZ”) Regulations (Chapter 26 of Title 11), the Applicant shall set aside a minimum of: (a) eight percent of the residential gross floor area of the South Parcel Building not located in the structure’s penthouse, i.e. 28,425 square feet (“South Parcel’s Main Building Required Set Aside”) for Inclusionary Units; ~~and~~ (b) the North Parcel 50% AMI Component (defined below) as Inclusionary Units in the South Parcel Building; and (c) the South Parcel Building Penthouse Required Set Aside (defined below) in the South Parcel Building.
 - a. The South Parcel’s Main Building Required Set-Aside shall be broken down as follows:
 - i. 20% of the South Parcel Main Building Required ~~Inclusionary~~ Set-Aside, i.e. 5,685 square feet shall be set aside for households earning up to 50% AMI; and
 - ii. 80% of the South Parcel Main Building Required ~~Inclusionary~~ Set-Aside, i.e. 22,740 square feet shall be set aside for households earning up to 80% AMI;
 - b. In addition to the South Parcel’s Main Building Required ~~IZ~~ Set-Aside, and for so long as the project exists, the Applicant shall set aside an additional 2,260 square feet of residential gross floor area in the South Parcel Building for units reserved for households earning up to 50% AMI (the “North Parcel 50% AMI Component”). This amount represents 20% of the 11,300 square feet of gross floor area that the North Parcel is required to set aside as Inclusionary Units pursuant to 11 DCMR § 2603 based on the proposed residential gross floor area of the North Parcel Building (141,249 square feet x eight percent). Because these units are in satisfaction of a portion of the North Parcel Building’s IZ requirements, the units, although located in the South Parcel Building, shall be deemed “inclusionary units” required under Chapter 26 of title 11, and therefore subject to all statutes and regulations regulating Inclusionary Units; and
 - c. In addition to the South Parcel Main Building Required Set-Aside and the North Parcel 50% AMI Component, the Applicant shall demonstrate that it has set aside a minimum of eight percent of the

residential gross floor of the penthouse habitable space located on the South Parcel Building (up to approximately 1,222 square feet), as Inclusionary Units reserved for households earning up to 50% AMI (“South Parcel Penthouse Required Set Aside”). These IZ units may be distributed throughout the South Parcel Building.

Delete the entirety of Condition B(4) and replace it with the following:

4. Prior to the issuance of the certificate of occupancy (“C of O”) for the South Parcel Building, the Applicant shall complete construction of the final Neal Place extension as shown on the Plans and open the roadway to vehicular traffic;

On May 9, 2016, upon motion by Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** this application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.8, this Order shall become final and effective upon publication in the *D. C. Register* on May 5, 2017.

BY THE 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