

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-21B

Z.C. Case No. 15-21B

Kenilworth Revitalization I JV, LLC & DCHA

(Modification of Consequence of PUD @ Squares 5113, 5114, and 5116)
January 28, 2021

Pursuant to notice, at its January 28, 2021 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Kenilworth Revitalization I JV, LLC and DCHA (collectively the “Applicant”) for the following relief under Subtitle Z § 703 of the Zoning Regulations (Title 11 of the District of Columbia Code of Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified): a modification of consequence to Z.C. Order No. 15-21 (the “Original Order”), as extended by Z.C. Order Nos. 15-21A and 15-21C, which approved a consolidated and first-stage planned unit development (“PUD”) for Lots 5 through 9 in Square 5113; Lot 10 of Square 5114; and Lots 164, 165, 172-180, and 186 in Square 5116, (the “Property”). The Commission considered the Application pursuant to Subtitle Z, Chapters 1 and 7. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. The following were parties to the Original Order:
 - The Applicant; and
 - Advisory Neighborhood Commission (“ANC”) 7D, in which ANC district the Property is located and so the “affected” ANC pursuant to Subtitle Z § 101.8.

NOTICE

2. The Applicant served the Application on ANC 7D on December 4, 2020, as indicated by the Certificate of Service submitted with the Application. (Ex. 2 at 5.)

PRIOR APPROVALS

3. Pursuant to the Original Order, effective January 20, 2017, the Commission approved:
 - A consolidated PUD (the “Consolidated PUD”) for Phase 1 of the proposed development to construct 166 new residential units and 2,980 square feet of non-residential uses;

- A first-stage PUD (the “First-Stage PUD”) for Phases 2 and 3¹ of the proposed development including the development of three multi-family buildings, townhouses, and stacked flats; with
- A related map amendment for the Property from the R-1-B Zone District and R-5-A Zone District to the R-5-B and C-2-A Zone Districts, respectively (collectively, the “Approved PUD”).

4. Pursuant to Z.C. Order No. 15-21A, effective January 24, 2020, the Commission approved a two-year extension of the deadlines established by the Original Order as follows:

- Consolidated PUD:
 - By January 20, 2021 – file an application for a building permit to construct the Consolidated PUD; and
 - By January 20, 2022 – start construction of the Consolidated PUD; and
- First-Stage PUD:
 - By January 20, 2021 – file a second-stage PUD application for Phase 2 of the Approved PUD, which timely filing will extend the validity of the First-Stage PUD to January 20, 2022.²

II. THE APPLICATION

5. The Application proposed the following minor changes to the plans and the related conditions approved by the Original Order: (Ex. 2, 5-7.)

- Corrections to Decision A.2(a) to:
 - Reduce the number of units in Apartment Building 3 from 67 to 65;
 - Reduce the amount of non-residential square footage from 4,500 to 2,980 square feet to correct the calculations and allow for a 200-square-foot water room not previously shown; and
 - Increase the amount of additional rental units from 44 to 59;
- Modifications to the lot designations and square footage stated on Sheet S-17 of the plans approved by the Original Order to accommodate the change from public to private alleys and to allow the multifamily senior building to be on its own lot; (Ex. 2D.)
- Revisions to the Zoning Data Table reflecting the changes to the site plan and revised lot layouts and necessitating adjustments to the relief granted by the Original Order from certain development standards, (Ex. 6,) specifically:
 - Side Yard**
 - Reduce the side yards for the townhomes in the new Lot A to between three and 6.7 feet; and (Ex. 2E at Sheet 2.)
 - Reduce the side yards for the townhomes in the new Lot A to between six and seven feet; (Ex. 2E at Sheet 2.)

¹ The Approved PUD was to be constructed in staggered phases so as to minimize displacement to the existing residents of the affordable housing units on the Property during construction. (See Z.C. Order No. 15-21 at 17.)

² The Applicant filed a separate application for a time extension in Z.C. Case No. 15-21C, which the Commission granted at the same January 28, 2021, public meeting.

Rear Yard

- A 12.5-foot reduction of the approved conforming 15-foot rear yard for the townhomes in the new Lot B to 2.5 feet; and (Ex. 6 at Sheet 4)
- A five-foot reduction of the approved conforming 15-feet for the townhomes in the new Lot A to 10 feet; (Ex. 6 at Sheet 2.)

Gross Floor Area (“GFA”) and Floor Area Ratio (“FAR”)

- Increase the GFA for the Property in both the C-2-A and R-5-B Zone Districts, but with only minor changes in FAR, which remains within the maximum permitted by the Original Order because the lot area has increased due to the inclusion of the now private alleys;

Lot Occupancy

- Additional relief for Lot B (R-5-B) to authorize 62.5% lot occupancy instead of the approved conforming 46.95%; and
- Reduce relief for Lot D (C-2-A) to 76% lot occupancy instead of the approved 87%;

Loading

- Provide one 30-foot loading berth instead of the required 55-foot loading berth; and
- Provide one 100-square-foot loading platform instead of the required 200-square-foot loading platform; and

Parking

- Adjust the number of parking spaces provided based on reconfigured lots, with relief remaining consistent with that granted by the Original Order.

6. The Application asserted that the proposed revisions:

- Were minor adjustments required to comply with the Building Code and to correct minor calculation errors in the plans approved by the Original Order;
- Did not significantly change the building footprints; and
- Would be consistent with the Approved PUD granted by the Original Order. (Ex. 2, 5-7.)

III. RESPONSES TO THE APPLICATION

OP

7. OP submitted a report dated January 4, 2021, (the “OP Report”) that recommended approval of the Application because OP determined the proposed changes stemmed from minor changes and corrections to the plans approved by the Original Order and would better align the text of the order with the approved plans. (Ex. 4.)

ANC

8. ANC 7D did not submit a written report in response to the Application.

9. ANC 7D03 Commissioner Dorothy Douglas submitted a January 27, 2021 letter stating: (Ex. 8.)

- That the Applicant had presented the Application at the ANC’s January 12, 2021 public meeting, and the ANC had not taken a final vote on the Application; and

- Commissioner Douglas, as the ANC Commissioner in whose Single Member District the Property is located, supported 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 proposed change to a condition in the final order” and “a redesign or relocation of architectural elements” as examples of modifications of consequence.
4. 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 7D.
5. At its January 14, 2021 public meeting, the Commission determined that the Application should be not be considered as a minor modification as initially requested, but instead as a modification of consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify the conditions and architectural elements approved by the Original Order, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2). The Commission notes that while the Application does involve some changes to the extent of the zoning flexibility granted by the Original Order, it can still be considered as a modification of consequence because the extent of the relief is minor and no new areas of relief are requested.
6. The Commission concludes that the Application is consistent with the Approved PUD because the proposed changes and corrections are relatively minor and intended to address calculation errors in the original plans and account for minor design changes necessitated by the Building Code and permitting process.

GREAT WEIGHT TO RECOMMENDATIONS OF OP

7. The Commission must give “great weight” to the recommendations of OP pursuant to § 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 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
8. The Commission finds OP’s analysis and recommendation to approve the Application persuasive and concurs in that judgment.

GREAT WEIGHT TO WRITTEN REPORT OF THE ANC

9. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 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) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) 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) (citation omitted).)
10. Since the ANC did not submit a written response to the Application, there is nothing to which the Commission can afford “great weight.” Nevertheless, the Commission finds ANC Commissioner Douglas’s support persuasive and concurs in that judgement.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a modification of consequence to modify Condition Nos. A.1-2 and 4-5 and C.1 of Z.C. Order No. 15-21, as extended by Z.C. Order Nos. 15-21A and 15-21C, to authorize the changes stated above, to read as follows (deletions shown in **bold** and **strikethrough** text; additions in **bold** and underlined text):

A. PROJECT DEVELOPMENT

1. The PUD shall be developed in accordance with the architectural plans and development data submitted ~~in to~~ into the record of Z.C. Case No. 15-21 on April 29, 2016, as Exhibits 18A1 through 18A14, as modified by:
 - The architectural drawings and pages submitted into the record of Z.C. Case No. 15-21 on September 6th, 2016, as Exhibits 40A-40C;
 - The architectural drawings submitted into the record of Z.C. Case No. 15-21 on September 30th, 2016, as Exhibit 53, pp. 26-39, and;
 - The architectural drawings and plans submitted into the record of Z.C. Case No. 15-21 on October 31, 2016, as Exhibit 61;
 - The architectural drawings submitted into the record of Z.C. Case No. 15-21B on December 4, 2020, as Exhibit 2E;
 - The architectural drawings submitted into the record of Z.C. Case No. 15-21B on January 25, 2021, as Exhibit 6; and
 - As further modified by the guidelines, conditions, and standards herein (collectively, the “Plans”).

2. In accordance with the Plans, the PUD shall be a mixed-use project consisting of approximately 530 residential uses units, and approximately 4,500 2,980 square feet of gross floor area devoted to nonresidential uses:
 - (a) The Consolidated PUD shall include two multi-family buildings which front on Kenilworth Avenue, a 67 65-unit building (Apartment Building 3), which includes 4,500 2,980 square feet of nonresidential space on the ground floor and a 42-unit senior building (Apartment Building 4), as well as 44 59 additional rental units in a mix of single-family town houses and stacked flats with two-, three-, four-, and five-bedroom unit types; and
 - (b) The First Stage PUD shall include a second and third phase of development ("Phase 2" and "Phase 3") which consist of three multi-family buildings, townhouses, and stacked flats with two-, three-, four-, and five-bedroom types. A total of approximately 321 units is included in Phase 2 and approximately 42 units in Phase 3.
4. The Applicant shall construct the fencing shown in Sheet L-220 of Exhibit 61 of the record of Z.C. Case No. 15-21 for the townhouses and low-rise units.
5. The Applicant is granted flexibility from the parking requirements, side yard requirements, rear yard requirements, loading requirements, and lot occupancy requirements consistent with the approved Plans (Ex. 40A, pp. S16-S18A of Z.C. Case No. 15-21, as modified by Exhibits 2E and 6 of Z.C. Case No. 15-21B), as well as a complete waiver of the Inclusionary Zoning Regulations set forth in former Chapter 26 of Title 11 DCMR as those regulations existed on September 5, 2016.

C. TRAFFIC MITIGATION

1. The Applicant shall construct new streets and sidewalks as shown on the Plans and the Applicant's PowerPoint presentation in accordance with DDOT standards and subject to DDOT approval; (Ex. 45A1-45A2.) of Z.C. Case No. 15-21.

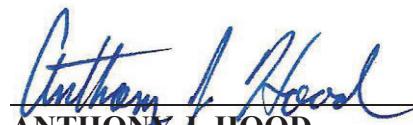
All other conditions of Z.C. Order No. 15-21, as extended by Z.C. Order No. 15-21A and 15-21C, remain unchanged and in effect.

VOTE (Jan. 28, 2021): 5-0-0 (Peter G. May, Michael G. Turnbull, Robert E. Miller, Anthony J. Hood, and Peter A. Shapiro, to **APPROVE**).

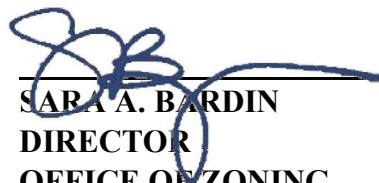
In accordance with the provisions of Subtitle Z § 604.9, this Order No. 15-21B shall become final and effective upon publication in the *D.C. Register*; that is, on April 16, 2021.

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

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.