

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 17-05C
Z.C. Case No. 17-05C
2100 2nd Street SW, LLC
(Modification of Consequence of Design Review @
Lot 10 in Square 613 [2121 First Street, S.W.]
May 11, 2020**

At its properly notice public meeting on May 11, 2020, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of 2100 2nd Street SW, LLC (the “Applicant”) for:

- A modification of consequence to modify Condition Nos. 1 and 5 of Z.C. Order No. 17-05 (the “Original Order”), as modified by Z.C. Order Nos. 17-05A and 17-05B, and the plans approved thereby, for Lot 10 in Square 613, with a street address of 2121 First Street, S.W. (the “Property”) in the CG-5 zone; and
- A waiver from Subtitle Z §§ 703.5 and 703.6 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations [“Zoning Regulations of 2016”], to which all subsequent citations refer unless otherwise specified) to consider these modifications as a modification of consequence, pursuant to Subtitle Z § 101.9.

The Application proposed to substitute the DC Central Kitchen (“DCCK”) in place of a retail use, which was approved by the Original Order. The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedure, which are codified in Subtitle Z. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PRIOR APPROVALS

1. Pursuant to the Original Order, effective on October 12, 2018, the Commission granted the Applicant design review approval for the conversion of the former headquarters of the United States Coast Guard into a mixed-used residential building with ground-floor retail (the “Approved Project”).
2. Pursuant to Z.C. Order No. 17-05A, effective on November 9, 2018, the Commission approved a modification of the Approved Project to modify the originally approved plans.

3. Pursuant to Z.C. Order No. 17-05B, effective on August 28, 2020, the Commission approved a modification of significance to add a special exception to permit a temporary lodging use.

PARTIES

4. The only party to Z.C Case No. 17-05 other than the Applicant was Advisory Neighborhood Commission (“ANC”) 6D, the “affected” ANC pursuant to Subtitle Z § 101.8.
5. The Applicant served the Application on ANC 6D and the Office of Planning (“OP”) on April 24, 2020, as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2D.)

II. THE APPLICATION

RELIEF REQUESTED

6. The Application requested a modification of consequence to revise the plans and conditions approved by the Original Order in order to include DCCK as a service use on the ground floor of the Approved Project. DCCK is a nonprofit and social enterprise that combats hunger and poverty through job training and job creation for individuals facing high barriers to employment, while also providing food to DC Schools and others. The Application proposes that DCCK will occupy a total of 35,000 square feet, composed of 20,000 square feet on the ground floor and 15,000 square feet on a to-be constructed partial second floor.
7. The Application specifically requested the following modifications:
 - Add service uses to the retail uses approved for the ground floor;
 - Add approximately 15,000 square feet as a partial second floor for DCCK, resulting in an increase of 0.14 floor area ratio (“FAR”) above the approved 4.45 FAR (to a total FAR of 4.59, within the maximum 5.0 FAR permitted in the CG-5 zone)¹, requiring the Commission’s discretionary approval pursuant to Subtitle K § 505.3(c); and
 - Modify Condition No. 5 of the Original Order to include DCCK in the Approved Project’s loading management plan.
8. The Application requested that the Commission consider these modifications as a modification of consequence, even though it acknowledged that a modification of approved

¹ Due to a calculation error, the Applicant’s Statement (Ex. 2) and the OP Report (Ex. 6) incorrectly described the Application as proposing a 0.01 increase in FAR. However, the Application’s plans (Ex. 2H) correctly depicts the new mezzanine as consisting of 15,000 square feet resulting in the correct 0.14 FAR increase. The resulting increase to an overall FAR of 4.59 remains under the 5.0 FAR permitted pursuant to Subtitle K § 505.3(c).

uses is typically considered a modification of significance pursuant to Subtitle Z §§ 703.5-703.6², because:

- The proposed service use is permitted as a matter of right in the CG-5 zone;
- It will not result in any exterior changes to the building;
- The timing, facility, and operational concerns with DCK's current locations, including the termination of existing leases (particularly its primary food production facility, which is set to expire in October 2020), which would negatively impact DCK's ability to continue to provide its services during the COVID-19 pandemic, and that adequate facilities are critical to its mission. (Ex. 2, pp. 3-4.)

III. RESPONSES TO THE APPLICATION

OP

9. On May 1, 2020, OP submitted a report (the "OP Report") that did not object to the Application's request that the Commission consider the Application as a modification of consequence for the reasons stated in the Application, even though OP recognized that the proposed modification would normally qualify as a modification of significance as a proposal to modify the uses of the Approved Project. (Ex. 6.)
10. The OP Report recommended approval of the Application.

ANC

11. On April 14, 2020, ANC 6D submitted a report (the "ANC Report"), stating that at its duly noticed public meeting on April 13, 2020, at which a quorum was present, the ANC voted to support the Application and noted that:
 - DCK's use would complement the Approved Project's uses; and
 - DCK would provide "a training program for deeply disadvantaged populations and integrating them into the community" which "directly serves [the ANC's] interest in the maintaining social diversity in our own community." (Ex. 3.)

OTHER RESPONSES

12. Patrick Davis, Chief Operating Officer of DC Public Schools ("DCPS"), submitted a letter in support of the Application (the "DCPS Letter") that noted: (Ex. 4.)
 - The importance of DCK's job training and job creation programs, along with its programs providing food to DCPS;
 - That the proposed location would allow DCK to consolidate its operations in a single efficient location; and
 - That the specific proposed location in Buzzard Point would be complementary to the restaurant and hospitality uses planned for the surrounding neighborhood.
13. Ward 6 Councilmember Charles Allen submitted a letter in support of the Application that noted: (Ex. 5.)

² The Applicant did not formally request a waiver pursuant to Subtitle Z § 101.9.

- DCCK’s longtime presence in Ward 6;
- The importance of DCCK’s service programs to the ward and District as a whole; and
- That consolidating all of DCCK’s operations at a single location would help support their mission.

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. Subtitle Z § 703.6 includes “a change of use” as an example of a modification of significance, which Subtitle Z § 703.5 requires be considered after a public hearing.
5. Subtitle Z § 101.9 authorizes the Commission, “for good cause shown, [to] waive any of the provisions of this subtitle if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.”
6. The Commission concludes that although the Application did not formally request a waiver pursuant to Subtitle Z § 101.9 to waive the modification of significance requirements, the Application effectively requested a waiver under Subtitle Z § 101.9, which establishes a “good cause” standard for approval.
7. The Commission concludes that there is good cause to grant the waiver from Subtitle Z §§ 703.5 and 703.6 because the circumstances surrounding the Application’s request are unique and justify overriding the Commission’s reluctance to consider a change of use as a modification of consequence for the following reasons:
 - The requested service uses are allowed as a matter of right in the CG-5 zone;
 - The District’s current state of emergency caused by the COVID-19 pandemic³ has suspended the Commission’s public hearings and slowed the permitting processes required to allow DCCK to move by October 2020 when its existing leases expire;
 - DCCK’s desire to consolidate its operations in a single, modern location combined with the delayed approval and permitting process caused by the District’s state of emergency in order to do so prior to the expiration of its current lease agreements;

³ The Mayor’s Office declared a state of emergency for the District in response to the COVID-19 Pandemic on March 11, 2020. (Mayor’s Order 2020-045.)

- The particular importance of DCKK's service mission during the ongoing health crisis; and
 - The importance of adequate facilities to the furtherance of that mission.
8. The Commission concludes that ANC 6D, the only party to the case other than the Applicant and whose report stated support for the Application, would not be prejudiced by the granting of the waiver, which is not otherwise prohibited by the Zoning Regulations.
 9. The Commission concludes that with the waiver, it can consider the Application as a modification of consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify the conditions and plans approved by the Original Order, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
 10. 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 6D.
 11. The Commission concludes that the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties to the original proceeding has been met because ANC 6D, the only party other than the Applicant to the case, filed a response to the Application on April 14, 2020, and therefore the Commission could consider the merits of the Application at its public meeting on May 11, 2020.
 12. The Commission finds that the Application is consistent with the Approved Project, as authorized by the Original Order, as modified by Z.C. Order No. 17-05A, because:
 - DCKK's service use is analogous to the retail use originally approved and may result in fewer potential adverse impacts to the surrounding neighborhood;
 - The additional square footage, and resulting increased 4.59 FAR⁴, does not substantially change the exterior design approved by the Original Order, because the proposed FAR increase results from changes to the Approved Project's internal configuration;
 - The resulting increase in the Approved Project's overall FAR to 4.59 remains under the maximum 5.0 FAR permitted in the CG-5 zone pursuant to Subtitle K § 505.3(c) and contains more than 2.0 residential FAR;
 - The Application diversifies the Approved Project's uses;
 - The Application provides an important service for the community; and
 - The Approved Project will continue to be consistent with the objectives of the Capitol Gateway zones and not inconsistent with the Comprehensive Plan.

⁴The Commission acknowledges the erroneous statement that the FAR increase was 0.01 in the Applicant's Statement (Ex. 2) and in the OP Report (Ex. 6) instead of the correct 0.14 FAR increase, but notes that the Application's plans (Ex. 2H) correctly show the new mezzanine as consisting of 15,000 square feet that results in the 0.14 FAR increase.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

13. The Commission must give “great weight” to the recommendations of OP pursuant to § 13(d) 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 (2001)) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
14. The Commission notes OP’s lack of objection to the Application being considered as a modification of consequence and finds persuasive OP’s recommendation that the Commission approve the Application and therefore concurs in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

15. 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).)
16. The Commission finds the ANC Report’s support for the Application being considered as a modification of consequence persuasive and concurs with the ANC’s recommendation that the Commission approve the Application because the DCCK use will complement the Approved Project.

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 for a modification of consequence to Condition Nos. 1 and 5 of Z.C. Order No. 17-05 and the plans approved thereby, as modified by Z.C. Order Nos. 17-05A and 17-05B, with a waiver of Subtitle Z §§ 703.3 and 703.4, to read as follows (deletions shown in **bold** and ~~striketrough~~ text; additions in **bold** and underlined text). All other conditions of Z.C. Order No. 17-05, as modified by Z.C. Order Nos. 17-05A and 17-05B, remain unchanged and in effect.

1. The Project shall be built in accordance with:
 - The plans, including flood proofing plans, and elevations dated May 16, 2017, and marked as Exhibit 16A of the record of Z.C. Case No. 17-05; as modified by the

drawings submitted as Exhibits 26A, 30A, and 34A of the record of Z.C. Case No. 17-05, ~~and~~;

- e. As modified by the guidelines, conditions, and standards contained in the Z.C. Order No. 17-05;
- f. As amended by the plans submitted on August 10, 2018, marked as Exhibit 1C of the record of Z.C. Case No. 17-05A; and
- g. As amended by the plans submitted on April 24, 2020, marked as Exhibit 2H of the record of Z.C. Case No. 17-05C; and
- h. As modified by the guidelines, conditions, and standards herein.

...

5. Loading Demand Management Measures. Prior to the issuance of the first Certificate of Occupancy for the Project, the Applicant shall demonstrate that it has or will adhere to the following Loading Mitigation measures as set forth in the DDOT report in Z.C. Case No. 17-05:

- a. A loading dock manager will be designated by the building management (duties may be part of other duties assigned to the individual). He or she will coordinate with vendors and tenants to schedule deliveries and will be on duty from 9:00 a.m. to 5:00 p.m. and will coordinate with the community and neighbors to resolve any conflicts should they arrive;
- b. DC Central Kitchen (“DCCK”) will designate a loading coordinator (duties may be part of other duties assigned to the individual) who will coordinate with the Dock Manager regarding the delivery schedule for all DCCK deliveries.
- ~~b.~~ c. All tenants, including DCCK, will be required to schedule deliveries that utilize the loading dock (any loading operation conducted using a truck 20 feet in length or larger) and all loading activities are required to occur at the loading docks;
- ~~c.~~ d. The dock manager will schedule deliveries such that the dock’s capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as not to compromise safety or impede street or intersection function;
- ~~d.~~ e. The dock manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic along 2nd Street and 1st Street except during those times when a truck is actively entering or exiting a loading berth;
- ~~e.~~ f. Trucks larger than WB-40 will not be permitted in any loading berths except for the northern most loading berth on 2nd Street;
- ~~f.~~ g. Non-certified flaggers will be provided to assist with inbound and outbound truck maneuvers in each of the loading docks to ensure vehicular, bike, and pedestrian traffic is not impeded;
- ~~g.~~ h. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR

20 – Chapter 9, § 900 (Engine Idling), the regulations set forth in DDOT’s Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route Map; and

- h. i.** The dock manager will be responsible for disseminating suggested truck routing maps to the building’s tenants and to drivers from delivery services that frequently utilize the development’s loading dock as well as notifying all drivers of any access or egress restrictions. The dock manager will also distribute materials as DDOT’s Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with idling laws. The dock manager will also post these documents and notices in a prominent location within the service area.

VOTE (May 11, 2020): **5-0-0** (Michael G. Turnbull, Robert E. Miller, Anthony J. Hood, Peter A. Shapiro, and Peter G. May to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 17-05C shall become final and effective upon publication in the *D.C. Register*; that is, on August 28, 2020.



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.