

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 17-08A
Z.C. Case No. 17-08A
Providence Place I, LP
(Modification of Significance of PUD @
599 50th Street, N.E. (Lot 827 in Square 5194))
December 2, 2021

Pursuant to notice, at its public hearing on December 2, 2021, the Zoning Commission for the District of Columbia (the “Commission”) deliberated on the application (the “Application”) of Providence Place I, LP (the “Applicant”) for the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), “Zoning Regulations of 2016”, to which all subsequent citations refer unless otherwise specified) for Lot 827 in Square 5194, with a street address of 599 50th Street, N.E. (the “Property”):

A Modification of Significance pursuant to Subtitle Z § 704 of Z.C. Order No. 17-08 (the “Original Order”), by which the Commission approved a Planned Unit Development (“PUD”) and related Zoning Map amendment for the Property.

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures in Subtitle Z. For the reasons stated below, the Commission **APPROVES** the Application.

SUMMARY ORDER

PARTIES

The only parties to the Original Order were:

- The Applicant; and
- Advisory Neighborhood Commission (“ANC”) 7C, in which the Property is located, and so is an “affected” ANC pursuant to Subtitle Z § 101.8.

The Applicant served the Application on ANC 7C and the Office of Planning (“OP”) on June 28, 2021, attested by the certificate of service included in the Application. (Exhibit [“Ex.”] 2.)

NOTICE

On September 28, 2021, the Office of Zoning (“OZ”) sent notice of the December 2, 2021 public hearing, to:

- ANC 7C;
 - ANC 7C01 Commissioner, whose district includes the Property;
 - Office of Planning (“OP”);
 - District Department of Transportation (“DDOT”);
 - Department of Energy and the Environment (“DOEE”);
 - District Department of Consumer and Regulatory Affairs (“DCRA”);
 - Office of the Attorney General (“OAG”);
 - Ward 7 Councilmember, whose ward include the Property;
 - Chair and At-Large members of the Council of the District of Columbia; and
 - Owners of property within 200 feet of the Property.
- (Ex. 15-16.)

OZ published notice of the December 2, 2021 public hearing, in the September 24, 2021 *D.C. Register* (68 DCR 10098) (Ex. 15-16).

On December 2, 2021, at its regularly scheduled public hearing, the Commission granted a waiver pursuant to its authority in Subtitle Z § 101.9, to accept posting of the hearing notice at the Property 37 days prior to the public hearing instead of 40 days prior to the public hearing as required by Subtitle Z § 402.3.

PRIOR APPROVAL

Pursuant to the Original Order, effective March 9, 2018, the Commission approved a consolidated PUD and related Zoning Map amendment to the RA-2 zone to permit redevelopment of the Property with a five-story apartment house consisting of approximately 100 units, or alternatively, a four-story apartment house with approximately 93 units (the “Approved PUD”).

THE APPLICATION

On June 24, 2021, at its regularly scheduled public meeting, the Commission granted a limited waiver from Subtitle Z § 300.7 to permit filing of the Application less than 45 days from the date of filing of its Notice of Intent (“NOI”). (Z.C. Case No. 17-08, Ex. 48A.)

The Application requests a Modification of Significance to the Approved PUD to include flexibility from the loading requirements. The Applicant is proposing a vertical clearance height of 12 feet, 6 inches where Subtitle C § 905.2 requires a minimum vertical clearance of 14 feet. Additionally, on occasions where the proposed clearance cannot accommodate the height of taller trucks, the Applicant proposes a Loading Management Plan (“LMP”) for loading/unloading on 50th Street, N.E. (Ex. 3F.)

OP Reports

OP submitted a report dated July 14, 2021, (Ex. 11, the “OP Setdown Report”) and a report dated November 19, 2021 (Ex. 20, collectively with the OP Setdown Report, the “OP Reports”). The OP reports recommended that the Commission approve the Application.

DDOT

DDOT submitted a report dated November 22, 2021, (the “DDOT Report”), that stated it had no objection to the approval of the Application subject to the condition that the Applicant’s LMP be revised to include the installation of a low clearance bar at the garage entry noting the height of the ceiling clearance. The Transportation Demand Management Plan for the Approved PUD should carry forward or otherwise remain in effect. (Ex. 22.)

ANC 7C

ANC 7C submitted a written report (the “ANC 7C Report”) in support of the Application. (Ex. 23.)

CONCLUSIONS

AUTHORITY

Pursuant to the authority granted by the Zoning Act (June 20, 1938, 52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a PUD and modifications to an approved PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z, Chapter 7.

Pursuant to Subtitle Z § 704.4, the scope of a public hearing on a Modification of Significance shall be limited to the impact of the proposed modification on the subject of the original application and shall not permit the Commission to revisit its original decision.

Since no persons appeared in opposition to the Application and ANC 7C was the only party to the Original Order and it supported the Application, a decision by the Commission to grant this Application would not be adverse to any party. Therefore, pursuant to Subtitle Z § 604.7, the Commission authorized a summary order in this case and determined it may waive the requirement that findings of fact and conclusions of law accompany the Order because such waiver will not prejudice the rights of any party.

PUD MODIFICATION

Based on the case record before the Commission, the Commission concludes that the Application’s proposed modifications of the PUD approved by the Original Order do not change the intent and purpose of that PUD as discussed below.

The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to this proceeding, in this case, ANC 7C.

The Commission concludes that the proposed modification would not affect the analysis underlying the approval of the PUD.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

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).)

The Commission finds persuasive OP's analysis and recommendation that the Commission approve the Application with the proposed flexibility language and therefore concurs in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

The Commission must give “great weight” to the issues and concerns raised in 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).”)

The Commission concurs with the ANC Report's recommendation of approval.

DECISION

In consideration of the case record, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application's request for:


A Modification of Significance to the Approved PUD to include flexibility from the minimum vertical clearance requirement in Subtitle C § 905.2.

The conditions in Z.C. Order No. 17-08 remain unchanged and in effect, except that Condition A is hereby revised to add the following:

The Applicant shall have development flexibility to permit a vertical clearance height of the loading berth at 12 feet, 6 inches, where 14 feet is required pursuant to Subtitle C § 905.2. Such flexibility is conditioned upon the implementation of the Applicant's Loading Management Plan included at Exhibit 3F of the case record for Z.C. Case No. 17-08A, and the installation of a low clearance bar at the garage entry noting the height of the ceiling clearance.

VOTE (December 2, 2021): 4-0-1 (Robert E. Miller, Joseph S. Imamura, Anthony J. Hood, and Peter G. May to **APPROVE**; Peter A. Shapiro, not present, not participating).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 17-08A shall become final and effective upon publication in the *DC Register*; that is, on January 7, 2022.



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.