

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

Leila Batties
202.419.2583
leila.batties@hklaw.com

September 24, 2024

VIA IZIS AND HAND DELIVERY

Zoning Commission for the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: Application for a Modification Without a Hearing for the Kenilworth PUD
Zoning Commission Case No. 15-21

Dear Members of the Commission:

On behalf of Kenilworth Revitalization I JV, LLC (the “Applicant”), with authorization from the D.C. Housing Authority, the owner of property located at Lots 5 through 9 of Square 5113, Lot 10 of Square 5114, Lots 164, 165, and 172 of Square 5116; and Lots 173-180 and 186 of Square 5116 (collectively, the “PUD Site”), we hereby submit this request for a modification without a hearing for the above-referenced Planned Unit Development (“PUD”) approved pursuant to Zoning Commission Order No. 15-21 (collectively, the “Application”). Specifically, the Application seeks a modification to Condition B.5. of the Order, which is related to the duration of van loop service.

This modification request is made pursuant to the Zoning Commission's authority established in Subtitle Z § 703 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”), which allows the Zoning Commission to approve modifications without a public hearing where the impact of the modification may be understood without witness testimony, including, but not limited to, a proposed change to a condition in the final order. *See* 11-Z DCMR § 703.6. As described below, the application is properly reviewed as a Modification Without a Hearing pursuant to Subtitle Z § 703 because it seeks to correct a condition of the Order previously approved by the Zoning Commission as part of a PUD.

Attached hereto as Exhibit A is Zoning Commission Form 105 – Application for a Minor Modification, Zoning Commission Form 100 – Application Signature Page, and a letter of authorization from the Applicant. Also included is a check in the amount of \$520.00 for the filing fee.

A. Previously Approved PUD

Pursuant to **Zoning Commission Order No. 15-21 (Exhibit B)**, dated December 12, 2016, and effective on January 20, 2017, the Zoning Commission approved a First-Stage and Consolidated

PUD and Related Map Amendment for the development of Squares 5113, 5114, and 5116, west of Kenilworth Avenue, north of Douglas Street, east of Anacostia Avenue, and south of Shaw Drive. The approved PUD would clear the site in three phases, providing a mixed-use, mixed-income development of approximately 530 residential units consisting of a mix of public housing replacement units, tax credit units and workforce units, both for rent and for sale. The majority of the proposed housing units included in the PUD will be affordable. Affordable units include 290 public housing replacement units, a portion of which will be provided in the first phase, (“Consolidated PUD”). These units will include 290 very-low-income units (below 50% AMI) and approximately 240 low and moderate-income (60% to 120% AMI) units. The PUD will also include approximately 42 homeownership units.

Pursuant to **Zoning Commission Order No. 15-21A** (Exhibit C), dated January 28, 2019, and effective on January 24, 2020, the Zoning Commission approved time extensions to extend the deadline to file an application for a building permit to construct the Consolidated PUD to January 20, 2021, and the deadline to begin construction of the Consolidated PUD to January 20, 2022, and the deadline to file a second-stage PUD application pursuant to the First-Stage PUD to January 20, 2021, which timely filing will extend the validity of the First-Stage PUD to January 20, 2022.

By **Zoning Commission Order No. 15-21B** (Exhibit D), dated January 28, 2021, and effective on April 16, 2021, the Zoning Commission approved a modification of consequence to modify Condition Nos. A.1-2 and 4-5 and C.1 of Z.C. Order No. 15-21 to authorize changes to the development of the project.

By **Zoning Commission Order No. 15-21C** (Exhibit E), dated July 28, 2021, and effective on April 16, 2021, the Zoning Commission approved a request for a waiver of Subtitle Z § 705.5’s maximum one-year extension and a two-year extension by modifying Condition No. D.3 of Z.C. Order No. 15-21.

Pursuant to **Zoning Commission Order No. 15-21D** (Exhibit F), dated January 12, 2023, and effective on April 7, 2023, the Zoning Commission approved the Applicant’s request for: (i) a one-year time extension of the deadline to file a Second-Stage Application for Phase 2 from January 20, 2023, to January 20, 2024; and (ii) a one-year time extension of the validity of the First-Stage PUD from January 20, 2024, to January 20, 2025, with a waiver from Subtitle Z § 705.5 to allow a third time extension.

The Zoning Commission recently approved **Zoning Commission Case No. 15-21E** (Exhibit G), a request for a two-year PUD time extension. The Order documenting the Zoning Commission’s approval of the request has not yet been released.

B. Status of Approved PUD

The first phase of the Kenilworth PUD was approved as a Consolidated PUD under Z.C. Order No. 15-21. The initial phase consists of approximately 4.4 acres bounded by Kenilworth

Avenue, NE, Douglas Street, NE, 45th Street, NE and Quarles Street, NE. Construction of this phase is complete, and includes a mixed-use building with 4,500 s.f. of ground floor non-residential and 65 units above; a 42-unit senior building; and 59 single family homes and stacked flats. The van loop service that is the subject of this modification request has not commenced. However, the construction of the Frederick Douglass Memorial Bridge has been completed and provides a pedestrian connection between the PUD site and the Deanwood and Kenilworth Recreation Centers.

Modification Without a Hearing Requested

As shown on the PUD Minor Modification Conditions attached hereto as Exhibit F (the “Minor Modification Conditions”), the Applicant proposes to modify Condition B.5 of Zoning Commission Order No. 15-21 as follows:

FROM

Commencing with the issuance of a Certificate of Occupancy for the first building in Phase 1 and continuing service up until the issuance of a Certificate of Occupancy for the first building in Phase 2, the Applicant shall provide a van loop service from the Project to both the Deanwood and the Kenilworth Recreation Center. The Applicant shall provide loop service from the Project to the Deanwood and Kenilworth facilities four times per weekday, in the morning hours and after school.

TO

Commencing with the issuance of a Certificate of Occupancy for the first building in Phase 1 and continuing service up until the issuance of a Certificate of Occupancy for the first building in Phase 2, the Applicant shall provide a van loop service from the Project to both the Deanwood and the Kenilworth Recreation Center. The Applicant shall provide loop service from the Project to the Deanwood and Kenilworth facilities four times per weekday, in the morning hours and after school.

The van loop service shall continue until a more direct, well-lit pedestrian path from the Project to both the Deanwood and Kenilworth Recreation Centers is established.

From the case record, it is clear the PUD conditions were intended to specify that the van loop service would only be necessary until a more permanent solution was provided.

- Number five under the PUD Benefits and Amenities discussion within the same Order states that “[t]he Applicant will provide a van service to both the Deanwood and the Kenilworth Recreation Centers until a more direct, well-lit pedestrian path from the Project to the new Kenilworth Recreation Center is established.” See p. 10 of the Order. (Underline added.) This language was not included in the conditions, although it was otherwise included in the Order.

- In its Post-Hearing Submission in Exhibit 53 of the record, the Applicant states that “[t]o address the safety concerns arising out of this situation, the Applicant will provide a van service to both the Deanwood and the Kenilworth Recreation Centers until a more direct, well-lit pedestrian path from Project to the new Kenilworth Recreation Center is established.” See p. 3. (Underline added.) This statement is repeated in the Applicant’s Proffers and Conditions provided at Exhibit 59 in the record, and in the Draft Findings of Facts and Conclusions of Law at Exhibit 56. See pp. 1-2 and p. 21, respectively. The Applicant’s Revised Proffers and Conditions Chart at Exhibit 65B also includes this language for proposed condition C.82(b).
- This condition was also discussed at the public hearing between Ms. Goldman and Vice Chair Miller, when Vice Chair Miller stated that “[w]ell, I think the van shuttle service would be important until such time that there are these improved pedestrian connections to these facilities.” confirming that the van loop service should only be provided until the pedestrian connections are improved. (Underline added.)

While it was always intended that the van loop service would only be provided until better pedestrian connections were available, as demonstrated in the Applicant’s Proffers and Conditions, Draft Findings of Facts and Conclusions of Law, the Applicant’s Revised Proffers and Conditions, and even within the Order itself, the full intent of the proffer was not captured in the conditions. Therefore, the proposed modification Condition B.5. of Z.C. Order 15-21 reflects what was contemplated during the public hearing and does not change the material facts upon which the Commission based its original approval of the Application, consistent with Subtitle Z, Section 703.2.

C. Jurisdiction of the Zoning Commission and Compliance with Standards

Subtitle Z § 703 authorizes the Zoning Commission to approve modifications to approved final orders without a public hearing. Pursuant to Subtitle Z § 703.6, modifications can be approved without a public hearing where the impact of the modification may be understood without witness testimony, including, but not limited to, a proposed change to a condition in the final order. See 11-Z DCMR § 703.6.

The modification requested herein does not change the material facts upon which the Commission based its original approval, and accordingly, the request falls within the scope of a Modification Without a Hearing pursuant to Subtitle Z § 703.

D. Service on Affected Advisory Neighborhood Commissions (“ANCs”) and Parties to the Original Proceeding

Pursuant to Subtitle Z § 703.13, the Applicant is required to formally serve a copy of the subject application on all parties to the original proceeding at the same time that the request is filed with the Office of Zoning. According to Finding of Fact No. 8. of Zoning Commission Order No.

15-21, ANC 7D was a party to the original proceeding, and will be served with a copy of this modification request.

E. Conclusion

The Applicant respectfully requests approval of this Modification Without a Hearing to modify Condition B.5 of Zoning Commission Order No. 15-21. The Applicant requests that this application be placed on the agenda of the next available meeting of the Zoning Commission that is a minimum of 30 days following the filing of the application.

Thank you for your considerate attention to this matter.

Respectfully submitted,

HOLLAND & KNIGHT LLP


Leila M. Jackson Batties, Esq.

Attachments

cc: Advisory Neighborhood Commission 7D Commissioners
Jennifer Steingasser, D.C. Office of Planning (w/attachments via Email)
Joel Lawson, D.C. Office of Planning (w/attachments via Email)
Shepherd Beamon, D.C. Office of Planning (w/ attachments via Email)

CERTIFICATE OF SERVICE


I hereby certify that a copy of this request for Modification Without a Hearing to a PUD (Zoning Commission Order No. 15-21) was served on the following in accordance with Subtitle Z § 703.13 on September 24, 2024.

Office of Planning
Ms. Jennifer Steingasser
Mr. Joel Lawson
jennifer.steingasser@dc.gov
joel.lawson@dc.gov
shepherd.beamon@dc.gov

Advisory Neighborhood Commission (“ANC”) 7D
7D@anc.dc.gov

Commissioner Wendell Felder, Chairperson
ANC 7D
7D03@anc.dc.gov

Commissioner Sirraaj M. Hasan
Single Member District Representative, ANC 7D-01
7D01@anc.dc.gov



Leila M. Jackson Batties, Esq.