

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 17-21A**

Z.C. Case No. 17-21A

As You Like It, LLC

**(Modification of Consequence to Approved PUD @ Square 498, Lot 52 [501 I Street, S.W.]
October 27, 2022**

Pursuant to notice, at its October 27, 2022 public meeting, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of As You Like It, LLC (“Applicant”) for a Modification of Consequence to approve design and program changes to the approved Planned Unit Development (“PUD”) for Lot 52 in Square 498, with a street address of 501 I Street, S.W. (“Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

PRIOR APPROVALS

1. Pursuant to Z.C. Order No. 17-21 (“Order”), the Commission approved a consolidated PUD and related map amendment from the R-3 to the MU-4 zone for the Property, which authorized construction of a mixed-use building including office, actor and fellows housing, rehearsal, education, and costume design space for the Shakespeare Theatre Company (“STC”); approximately 64 for-sale residential units; and approximately 40 on-site and 15 off-site parking spaces (collectively, “Project”). The Project consisted of a four-story main building and four-and-a-half story annex building, with a height of approximately 48 feet and density of 2.87 FAR.
2. Pursuant to Z.C. Order No. 17-21(1), an administrative Covid-19 One-Year Time Extension was granted, pursuant to Subtitle Z § 705.9, which extended the Order’s validity to expire on November 29, 2022.
3. The Order was conditioned on the construction of the Project in accordance with the plans approved by the Commission as set forth in Condition A.1 of the Order (“Approved Plans”).

PARTIES AND NOTICE

4. The only party to the Order was Advisory Neighborhood Commission (“ANC”) 6D.¹
5. On September 15, 2022, the Applicant served the Application on ANC 6D, as well as the Office of Planning (“OP”) and the District Department of Transportation, as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 3.)

THE APPLICATION

6. On September 15, 2022, the Applicant filed the Application requesting a Modification of Consequence to authorize design and program changes, as set forth below. The Applicant explained that these changes were prompted by the significant financial impacts of the pandemic on STC:
 - Reduction in density from 2.87 FAR to 2.72 FAR and reduction in height of the annex from approximately 48 feet to 30 feet. These two changes reduce the STC program by approximately 7,000 square feet in total and remove the STC fellows housing and six actor housing units;
 - Minor changes to the penthouse, including an increase in height of the elevator overrun; adjustment of the footprint of the penthouse on both the main building and the annex to accommodate additional air handling units and the boiler room; and the addition of a protective canopy over the entrance to the dog run area;
 - A relocation of two surface parking spaces as parallel spaces along the private drive at the rear of the Property to allow for better fire truck access to the annex;
 - An increase in the inclusionary zoning (“IZ”) set-aside from 8% to 10% of the Project’s residential gross floor area, resulting in one (1) additional IZ unit;
 - A revised unit mix to create five market-rate three-bedroom units;
 - An increase in the Project’s sustainability measures to achieve LEED-Gold certification under the LEED v.4 rating system instead of under the LEED 2009 rating system; and
 - An increase in the number of electric vehicle parking spaces from two to three spaces and the addition of eight spaces made “EV-ready”.(Ex. 3.)
7. Concurrently with the Application, the Applicant also filed Z.C. Case No. 17-21B, a request for a two-year time extension of the Order’s validity from November 29, 2022 to November 29, 2024.

¹ United Neighbors of Southwest submitted a request for party status in opposition, which was later withdrawn. Martin Welles submitted a request for party status in opposition, which the Commission denied.

RESPONSES TO THE APPLICATION

8. OP submitted a report dated October 20, 2022, recommending approval of the Application. OP concluded that the Application could appropriately be considered as a modification of consequence. OP explained that the Application was generally consistent with the intent of the original approval as it would not decrease the public benefits of the approved Project and would increase the number of affordable units. OP also observed that the approximately 18-foot decrease in height of the annex would lessen the possibility of shadowing on the rowhouses to the north or the school play yard to the east. (Ex. 5.)
9. By report dated October 11, 2022, and pursuant to an unanimous vote taken at a regularly-scheduled and duly-noticed public meeting of the same date, ANC 6D supported the Application. (Ex. 6.)

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.”
4. 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 a Modification of Consequence.
- 4.. The Commission concludes that the Application qualifies as a Modification of Consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify conditions of the final Order and redesign certain architectural elements, and therefore the modification can be granted without a public hearing.
5. 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.
5. At its October 27, 2022 public meeting, the Commission determined that since ANC 6D, the only party to the original Order, had already submitted a report in support of the Application, the Commission did not need to establish a timeframe for the parties to respond to the Application pursuant to the requirement of Subtitle Z § 703.17(c)(2) and instead could proceed directly to deliberations.
7. The Commission finds that the Application is consistent with the PUD as approved by the Order because the proposed changes to height and density, adjustments to the penthouse, parking modifications, and increases to the affordable housing and sustainability

commitments would not result in any negative impacts and are consistent with the intent and goals of the original approval.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

8. The Commission is required to 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. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).
9. The Commission finds OP’s recommendation to approve the Application persuasive and concurs in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC(S)

10. The Commission must give “great weight” to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting 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 Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted).)
11. The Commission finds ANC 6D’s recommendation to approve the Application persuasive and concurs in its judgment.

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 Z.C. Order No. 17-21, subject to the following conditions and provisions:

1. The conditions of Z.C. Order No. 17-21 remain unchanged and in effect, except as follows (deletions shown in **bold** and ~~striketrough~~ text; additions in **bold** and underlined text):
 - a. Condition A.1 is hereby revised to read as follows:
 - A.1 The Project shall be developed in accordance with the architectural plans and drawings submitted on March 8, 2019, marked as Exhibits 39E1-39E9 of the record, and as modified by Exhibits 52D- 52H and 58B1-58B3 of the record, **and as further modified by Exhibit 3D of the record of Case No. 17-21A** (collectively the “Approved Plans”).

b. Condition A.2 is hereby revised to read as follows:

A.2 The Project shall have a FAR of no greater than ~~2.87~~ **2.72** and a height of no greater than 48 feet, ~~2 inches~~.

c. Condition B.1 is hereby revised to read as follows:

B.1 Affordable Housing.

- a. For the life of the Project, the Applicant shall set aside a minimum of ~~8%~~ **10%** of the residential GFA of the Project (approximately ~~6,831~~ **8,780** square feet of GFA) as Inclusionary Zoning Units in accordance with Subtitle C for households earning up to 80% of the Median Family Income, set forth in the chart below.

Residential Unit Type	Gross Floor Area / % of Total*	# of Units	Income Type	Affordable Control Period	Affordable Unit Type
<i>Total</i>	85,387/100% 86,574/100%	82 76	<i>Mixed</i>		
<i>Market Rate Units</i>	78,556/92% 77,794/90%	77 70	<i>Market Rate</i>		
<i>Inclusionary Zoning Units</i>	6,831/8% 8,780/10%	5 6	<i>Up to 80% of MFI</i>	<i>Life of the Project</i>	<i>Ownership</i>

d. Condition B.2 is hereby revised to read as follows:

B.2 Environmental and sustainable benefits

- a. Prior to the issuance of the first Certificate of Occupancy for the Project, the Applicant shall provide the Zoning Administrator with evidence that the Project is on track to secure LEED-Gold certification or higher from the U.S. Green Building Council under the ~~LEED-2009~~ **LEED v.4** rating system. Within 12 months after the issuance of the first certificate of occupancy for the Project, the Applicant shall submit evidence to the Zoning Administrator that it has secured such LEED Gold certification;

...

- c. Prior to the issuance of a Certificate of Occupancy, the Applicant shall demonstrate that it has installed at least ~~two~~ **three** electric vehicle charging stations in the garage **and has installed infrastructure to make an additional 8 spaces available for electric vehicle charging.**

e. Condition C.1 is hereby revised to read as follows:

- C.1. Following the issuance of **Order No. 17-21A** and the adjudication of any appeals or expiration of the appeals period, and for a minimum period of 20 years, the Applicant shall provide the following benefits: . . .


f. Condition D.10(a)(vii) is hereby revised to read as follows:


- D.10(a)(vii) The long-term bicycle storage room will **accommodate nontraditional sized bikes including cargo, tandem, and kids' bikes, provide a minimum of 21 horizontal spaces, a minimum of three spaces for cargo/tandem parking, and a minimum of seven spaces with access to electrical outlets for electric bikes and scooters.**

VOTE (October 27, 2022):

3-0-2 (Anthony J. Hood, Robert E. Miller, and Peter G. May to **APPROVE**; Joseph S. Imamura not present, not voting; third Mayoral appointee seat vacant)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 17-21A shall become final and effective upon publication in the *DC Register*; that is, on November 18, 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.