

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 17-05D**

Z.C. Case No. 17-05D

Eaternity Hospitality Group & 2100 2nd Street SW, LLC

**(Modification of Consequence of Design Review @ Square 613, Lot 10
[2100 First 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 Eaternity Hospitality Group and 2100 2nd Street SW, LLC (“Applicant”) for a Modification of Consequence to a Design Review approval granted in Z.C. Order No. 17-05, as modified by Z.C. Order Nos. 17-05A through 17-05C, for Lot 10 in Square 613 (“Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning 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. 17-05 (“Order”), effective March 2, 2018, the Commission approved a design review for the adaptive reuse of the former Coast Guard headquarters building as a multi-family building consisting of approximately 480 residential units with approximately 71,120 square feet of ground floor retail (“Building”). Because the Property is located in the CG-5 zone, design review approval was required pursuant to Subtitle K § 512 of the CG zone provisions of the Zoning Regulations.
2. Pursuant to Z.C. Order No. 17-05A, effective November 9, 2018, the Commission approved a modification of consequence to allow several modest modifications to the approved plans.
3. Pursuant to Z.C. Order No. 17-05B, effective August 28, 2020, the Commission approved a modification of significance to allow WhyHotel, a lodging use, to operate in the Building on a temporary basis.
4. Pursuant to Z.C. Order No. 17-05C, effective August 28, 2020, the Commission approved a modification of consequence to allow DC Central Kitchen to operate in the approved retail space and add a 15,000 square foot partial second floor.

PARTIES AND NOTICE

5. The only party to the Order other than the Applicant was Advisory Neighborhood Commission (“ANC”) 6D, the “affected” ANC pursuant to Subtitle Z § 101.8.
6. On July 5, 2022, the Applicant served the Application on ANC 6D, the D.C. Office of Planning (“OP”), and the D.C. Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2.)

THE APPLICATION

7. On July 5, 2022, the Applicant filed the Application requesting a Modification of Consequence to the Design Review approved plans to increase the approximately 8,028 square foot retail space on the southside of the Building by 2,712 square feet to accommodate a restaurant space¹. Specifically, 1,617 square feet of mezzanine to allow for second-story outdoor terrace seating and enclosing 1,095 square feet on the first floor of the outdoor seating area. (Ex. 2.) The proposal would provide for approximately 48 new seats in the interior mezzanine, and approximately 46 new seats on the second-story outdoor terrace, for a total of approximately 94 new seats. In addition, approximately 52 seats in the first-floor outdoor seating area would be enclosed. (Ex. 5, 9, 12.)
8. The Application noted that the requested changes to the approved plans would increase the gross floor area (GFA) of the Building by approximately 2,712 square feet, or .02 floor area ratio (FAR) for a total FAR of approximately 4.60², which remains within the 5.0 FAR maximum allowed in the CG-5 zone pursuant to the Commission’s discretionary authority under Subtitle K § 505.3(c). Per the Commission’s discretionary authority, it may grant bonus density for residential development in a building using a guideline of 1.0 FAR in excess of the normally allowed maximum of 4.0 FAR for up to 5.0 FAR maximum, provided that the building includes at least 2.0 FAR of residential uses³. Since the Building includes 3.83 FAR of residential uses, it exceeds the 2.0 FAR residential uses minimum required for the Commission to grant discretionary bonus density. (Ex. 2.)
9. The Application noted that the Applicant would commit to make a payment to the Housing Production Trust Fund (HPTF) equaling 8% of the newly proposed GFA, or approximately \$9,980 and that payment would be made consistent with the timeline set forth in Subtitle C § 1507. (Ex. 2.)
10. The Application also explained that the requested changes would trigger a parking requirement of three vehicle parking spaces and one long-term bicycle parking space;

¹ The restaurant name is the Brisa.

² Z.C. Order No. 17-05 approved a 4.45 FAR, and Z.C. Order No. 17-05C approved a 4.58 FAR.

³ Pursuant to Subtitle K § 505.3(a), the CG-5 zone permits 4.0 FAR or 4.8 FAR with Inclusionary Zoning with a maximum residential FAR of 2.0.

however, the Building currently exceeds vehicle parking space and long-term bicycle parking space requirements⁴. (Ex. 2.)

11. On September 20, 2022, the Applicant filed a supplemental statement to respond to ANC 6D's concerns regarding the potential noise impacts of the proposed second-story outdoor seating on the residential units in the Building. (Ex. 5.) The Applicant also confirmed that it will correct the color of the fixtures on the Anacostia Riverwalk Trail and provided a racial equity analysis, as requested by the Commission at its July 28, 2022 public meeting. (Ex. 5, 5C.)
12. The Applicant's supplemental statement included revised plans to incorporate a retractable canopy and removable guillotine windows on the second-story outdoor terrace to help mitigate noise impacts. (Ex. 5A, 5B.) Though the ANC requested that the entirety of the outdoor space be permanently and fully enclosed, the Applicant wanted to retain the ability to use the space as outdoor when appropriate. The Applicant noted that it does not believe the proposed outdoor seating will have a significant noise impact on the residential units given the location of the outdoor seating in proximity to the residential units and the modest scope of the proposed seating. (Ex. 5.)
13. The Applicant's supplemental statement proposed to increase its payment to the HPTF to account for the 1,095 square feet of area that will be covered by the retractable canopy on the second-story outdoor terrace. As a result, the proposed payment of \$9,980 would increase by \$4,030 for a total contribution of approximately \$14,010. (Ex. 5.)
14. The Applicant's supplemental statement also included a racial equity analysis. (Ex. 5C.) The analysis stated that the Application would further the racial equity goals of the Comprehensive Plan by facilitating employment opportunities and would not result in any residential displacement because the additional square footage requested is in space approved for non-residential uses. The Applicant further stated that the Application would aid in the creation of affordable housing because of the proposed contribution to the HPTF totaling approximately \$14,010.
15. On September 28, 2022, the Applicant filed a request to postpone the Commission's deliberation on this case, which was scheduled for September 29, 2022, to allow additional time for the Applicant to work with ANC 6D regarding its noise concerns; the Commission agreed to the request. (Ex. 7.)
16. On October 12, 2022, the Applicant filed a second supplemental statement, stating that it had continued discussions with ANC 6D, and at the ANC's October 11, 2022 meeting,

⁴ The Building currently provides 335 vehicle parking spaces while 270 spaces are required, and currently provides 233 long-term bicycle parking spaces while 138 spaces are required.

those discussions entailed proposed conditions to address the ANC's noise, traffic, and community outreach concerns.⁵ (Ex. 9.)

17. With respect to the ANC's noise concerns, the Applicant explained that it hired an acoustical consultant, Martin Beam of Miller, Beam and Paganelli, to prepare a report analyzing the potential noise impacts from the second-story terrace outdoor seating. (Ex. 9A.) In sum, the report found no discernable increase in noise resulting from the outdoor seating proposed in the Application and found a marked decrease when the proposed retractable canopy is deployed. The Applicant noted that the report assumed speakers would be in place to provide ambient noise and still there was less than a minimally perceptible difference in noise levels. However, the Applicant still agreed to a condition requiring deployment of the retractable canopy by 10:00 p.m. Sunday through Thursday and by 11:00 p.m. Friday and Saturday. (Ex. 9.)
18. The Applicant also acknowledged the ANC's request for a condition to impose directional controls on any outdoor speakers, and its request for a condition requiring reassessment of noise impacts after six months of operation. However, the Applicant explained the need for more clarity from the ANC to ensure that such conditions were clear and enforceable. (Ex. 9.)
19. With respect to the ANC's traffic concerns, the Applicant explained that it did not believe a traffic management plan was necessary for the Application because the original approval in Z.C. Order 17-05 was conditioned on implementing transportation mitigation measures and the Application will neither modify those measures nor have a significant impact on existing traffic management. The Applicant also stated that it does not plan to provide valet parking and will not otherwise encourage driving to the restaurant; however, restaurant patrons will have access to the retail parking spaces in the existing garage. (Ex. 9.)
20. With respect to the ANC's community outreach concerns, the Applicant stated that it met with the residents in the Building on three occasions, notice of each meeting was sent to all residents, and though attendance at each meeting was sparse, those in attendance were generally supportive of the Application. (Ex. 9.)
21. The Commission started deliberating on the Application at its October 13, 2022 public meeting and briefly questioned both the Applicant representative and the ANC representative on the dais. The Commission then decided to delay its deliberations to allow additional time for the Applicant and the ANC to agree on condition language addressing the ANC's concerns.
22. On October 25, 2022, the Applicant filed a third supplemental statement, stating final proposed conditions addressing the ANC's noise and traffic concerns. (Ex. 12.) The Applicant explained that it agreed to deploy the retractable canopy earlier at 9:00 p.m.

⁵ The Applicant filed its second supplemental statement before ANC 6D filed its second report (Ex. 10) on October 13, 2022; therefore, the Applicant did not have the opportunity to review the ANC's proposed conditions before filing its second supplemental statement.

instead of 10:00 p.m. on Sunday through Thursday, at the ANC's request. The Applicant explained that it agreed to engage an acoustical consultant within six months of the restaurant's operation to measure exterior noise levels and to take specific actions if noise levels exceed a certain level. However, the Applicant did not agree to the ANC's request to send a letter to all residents within six months to assess exterior noise levels from their perspective because there was no reliable way to evaluate any responses received and adjust noise levels accordingly from the Applicant's standpoint. The Applicant explained that 82 parking spaces in the garage are reserved retail spaces and Colonial Parking, which manages the garage, will enforce the requirement that individuals parking in the retail spaces are in fact retail patrons as confirmed by letter. (Ex. 12C.) The Applicant also included a report prepared by Wells & Associates confirming that the Application would not have a significant impact on the number of PM peak hour vehicle trips generated. (Ex. 12B.) The Applicant agreed to the following conditions:

- The Applicant shall deploy the second-story retractable canopy by 9:00 p.m. on Sunday through Thursday and by 11:00 p.m. on Friday and Saturday;
- Within six months of issuance of the certificate of occupancy for the restaurant, the Applicant shall engage an acoustical consultant to measure the exterior noise levels generated by the exterior space at Brisa. The acoustical consultant shall take measurements over the course of a Friday and Saturday evening and if measurements exceed 78 dBA L10 for more than 10% of the measurement period then the Applicant shall either: a) decrease capacity of the exterior second-story terrace while the canopy is not deployed by 10% on Friday and Saturday nights; or b) deploy the canopy on the second-story terrace by 10:00 p.m. on Friday and Saturday;
- The Applicant shall not provide a bar on the proposed second-story terrace;
- The Applicant agrees that speakers for the outdoor space, including the proposed second-story terrace, shall be deployed with directional placement and amplification toward the terrace seating that shall not exceed 75dBA at a distance of three feet, and shall be placed on the lower and second-story terrace in the locations shown on Exhibit 12A of the case record; and
- The Applicant agrees that individuals who drive to the restaurant shall have access to 82 spaces in the garage reserved for retail visitors, and that the parking garage management shall enforce the requirement that individuals parking in the retail spaces are in fact retail patrons.

RESPONSES TO THE APPLICATION

OP Report

23. On July 21, 2022, OP submitted a report ("OP Report") stating no objection to the Application being considered a Modification of Consequence and recommending approval

of the Application, subject to the Applicant making a payment to the HPTF of approximately \$9,980 or eight percent of the newly proposed GFA with the first half of the payment being made at the time of building permit for the proposed restaurant use and the second half of the payment being made at the time of certificate of occupancy for the proposed restaurant use.⁶ OP further stated that the proposal would increase the Building FAR by .02 for a total FAR of approximately 4.60, which is within the 5.0 FAR maximum permitted in the CG-5 zone pursuant to the Commission's discretionary authority outlined in Subtitle K § 505.3(c). OP also requested that the Applicant clarify that it will correct the color of the fixtures on the Anacostia Riverwalk Trial. (Ex. 4.)

24. On September 20, 2022, OP submitted a supplemental report including a racial equity analysis, as requested by the Commission at its July 28, 2022 public meeting. OP acknowledged the Applicant's proposed increase in the HPTF payment from \$9,980 to approximately \$14,010 to align with the additional GFA gained through the proposed second-story terrace and restated its condition that the HPTF payment timeline should be tied to the building permit and certificate of occupancy for the proposed restaurant use. OP's racial equity analysis concluded that the proposal would further policies of the Land Use, Housing, and Economic Development Elements of the Comprehensive Plan. Specifically, the proposed increase in retail square footage of the Building would augment an existing restaurant tenant space providing for a water-facing dining terrace overlooking the Anacostia River, it would not result in displacement of an existing business tenant, it would bring a new restaurant to Buzzard Point providing job opportunities for local residents, and it would result in a contribution to the HPTF of approximately \$14,010. (Ex. 6.)

ANC Report

25. On September 28, 2022, ANC 6D filed a report stating that at a duly noticed public meeting on September 21, 2022, with a quorum of four Commissioners present, the ANC voted 7-0-0 to oppose the modification to expand the restaurant space and install a mezzanine to allow for a second-story outdoor terrace. The ANC opposed the modification because it would prefer a permanent fully enclosed roof over the mezzanine (second-story terrace) to prevent noise impacts on nearby residential units instead of the retractable canopy proposed by the Applicant. The ANC report cited the following issues and concerns:
 - The ANC requested that the Applicant document the level of noise anticipated from the second-story terrace, which could funnel up to residents above, but the Applicant has not provided any such documentation;
 - Given the large size of the proposed restaurant and the considerable number of outdoor seats proposed, the ANC is curious if valet parking will be offered and/or if any other traffic management measures have been considered by the Applicant;

⁶ Alternatively, the Applicant initially proposed for the HPTF payment to adhere to the payment timeline outlined in Subtitle C § 1507, which is specific to penthouse habitable space.

- The ANC is concerned that the Applicant has failed to inform the residents in the Building about the proposal and therefore not addressed their concerns about the proposal; and
- The ANC would like a condition that no speakers be permitted in outdoor spaces.
(Ex. 8.)

26. On October 13, 2022, ANC 6D filed a second report stating that at a duly noticed public meeting on October 11, 2022, with a quorum of four Commissioners present, the ANC voted 7-0-0 to approve the modification to expand the restaurant space and install a second-story mezzanine level, subject to the following conditions:

- That the Applicant provide a detailed noise mitigation plan including the possible permanent deployment of the roof above the proposed mezzanine, and that if it is permitted to be nonpermanent, the plan for deployment will be reviewed by the residents after six months of operation and adjusted accordingly;
- That the Applicant provide a detailed plan for whether and how speakers will be deployed for the outdoor space including the proposed second-story terrace (e.g., directional placement, amplification) to avoid unnecessary disturbance of the Building residents; and
- That the Applicant provide a detailed traffic management plan, including valet and drop-off plans, and anticipated garage space with written agreements from the Building management. (Ex. 10.)

27. On October 25, 2022, ANC 6D filed a third submission as a follow up to its second report dated October 11, 2022 and reiterated its three conditions of approval. (Ex. 11.) The submission noted that the ANC remained concerned about the noise impacts to residents that may result from the restaurant's second-story terrace as well as its impacts on traffic and parking. The ANC stated its appreciation for the Applicant's agreement to adjust the deployment hour of the retractable canopy from 10:00 p.m. to 9:00 p.m. Sunday through Thursday and to not provide a bar in the proposed outdoor eating space. The ANC acknowledged the Applicant's proposed condition to engage an acoustical consultant within six months of operation to assess noise impacts, but requested that the Applicant commit to a letter to all residents after six months of operation asking that they register any inconvenience resulting from the outdoor terrace, and that any responses be reported to the ANC. The ANC also acknowledged that the Applicant will not offer valet parking but requested that the Applicant provide written documentation of the number of parking spaces that will be reserved and expected to be available during peak hours of operation.

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 redesign or relocation of architectural elements and open spaces from the final design approved by the Commission” as an example of a Modification 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 6D.
5. 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 redesign or relocation of architectural elements and open spaces from the final design approved by the Commission and therefore the modification can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission concludes that the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties has been met, and therefore the Commission considered the merits of the Application at its October 27, 2022 public meeting.
7. The Commission finds that the Application’s proposed expansion of retail space by 2,712 square feet to accommodate a new restaurant use consistent with the original approval in Z.C. Order 17-05. The Commission may exercise discretionary authority to grant bonus density for residential development of a maximum of 5.0 FAR in a building in the CG-5 zone, provided the building includes at least 2.0 FAR residential uses. The Building includes 3.83 FAR of residential uses, which exceeds the 2.0 FAR minimum; the proposed retail expansion would result in 4.60 FAR for the Building, which is within the maximum 5.0 FAR limit; and the Applicant has committed to make a payment of \$14,010 to the HPTF. For these reasons, the Commission finds it appropriate to exercise discretionary authority to grant bonus density in these circumstances. The Commission also finds that the Application will further the Comprehensive Plan’s racial equity goals because the retail expansion will provide a new restaurant in Buzzard Point, outdoor dining facing the Anacostia River, job opportunities for local residents, and will not result in the displacement of any residential tenants or an existing business tenant.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

8. The Commission must give “great weight” to the recommendations of the 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)).)
9. 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. The Commission also agrees with OP’s condition

that the Applicant's payment to the HPTF of approximately \$14,010 be made in two installments, with the first half at the time of building permit for the restaurant use and the second half at the time of certificate of occupancy for the restaurant use.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

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 Board 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. The ANC filed three submissions to the record expressing issues and concerns primarily related to noise and traffic impacts that could result from the Application and recommended three conditions of approval. The Commission finds that the Applicant’s proposed conditions adequately address the issues and concerns raised by the ANC. Though the Commission agrees with the substance of the ANC’s three conditions of approval it does not agree with all the ANC’s specific requests.
12. First, the ANC requested that the Applicant provide a detailed noise mitigation plan including a plan for both permanent and non-permanent deployment of the roof of the proposed mezzanine and the opportunity for residents to review the plan after six months of operation if non-permanent deployment of the roof is permitted. The Commission finds the Applicant’s decision to only consider non-permanent deployment of the roof reasonable given the overall appeal of providing outdoor dining in a restaurant space. The Commission also finds the Applicant’s proposed condition to engage an acoustical engineer to measure exterior noise levels within six months of operation and its agreement to take specific actions if exterior noise exceeds a certain level adequate. The Commission understands the ANC’s request that the Applicant solicit direct feedback from residents by letter within six months of operation; however, the Commission agrees with the Applicant about the challenge of responding to such feedback in a consequential way. Therefore, the Commission agrees with the Applicant taking specific action to either decrease the capacity of the exterior second-story terrace by 10% while the canopy is not deployed on Friday and Saturday or deploy the canopy at 10 pm on Friday and Saturday, if exterior noise levels exceed a certain level within six months of operation.
13. Second, the ANC requested that the Applicant provide a detailed plan for deployment of speakers in outdoor space. The Commission finds the Applicant’s proposed condition adequate to address the ANC’s concerns about speaker placement. Specifically, the

Applicant agreed that speakers will be deployed with directional placement, amplification toward the terrace seating, will not exceed 75dBA at a distance of three feet, and will be placed on the lower and second-story terrace in the locations shown on Exhibit 12A of the case record.

14. Third, the ANC requested that the Applicant provide a detailed traffic management plan, including valet and drop-off plans, and anticipated garage space with written agreements from Building management. The Commission does not believe the Application warrants a detailed traffic management plan as requested by the ANC. The Commission's original approval in Z.C. Case 17-05 was conditioned on implementation of transportation mitigation measures that can accommodate the proposed retail expansion as demonstrated by the report prepared by Wells & Associates confirming that the Application would not have a significant impact on the number of PM peak hour vehicle trips generated. (Ex. 12B.) Therefore, the Commission finds the Applicant's decision not to offer valet parking reasonable and its proposed condition to address the ANC's traffic concerns adequate. The Applicant agreed to reserve 82 spaces in the garage for retail visitors and Colonial Parking, which manages the garage, confirmed by letter that it will enforce the requirement that only retail patrons park in retail spaces. (Ex. 12C.)

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 the approved plans of Z.C. Order No. 17-05, as modified by Z.C. Order Nos. 17-05A through 17-05C, to increase the approximately 8,028 square foot retail space on the southside of the Building by 2,712 square feet to accommodate a restaurant space.

1. This approval is subject to the following conditions and provisions:
 - a. The Applicant shall deploy the second-story terrace retractable canopy by 9:00 p.m. on Sunday through Thursday and by 11:00 p.m. on Friday and Saturday;
 - b. Within six months of issuance of the certificate of occupancy for the restaurant, the Applicant shall engage an acoustical consultant to measure the exterior noise levels generated by the exterior space at Brisa. The acoustical consultant shall take measurements over the course of a Friday and Saturday evening and if measurements exceed 78 dBA L10 for more than 10% of the measurement period then the Applicant shall either: a) decrease capacity of the exterior second-story terrace while the canopy is not deployed by 10% on Friday and Saturday nights; or b) deploy the canopy on the second-story terrace by 10:00 p.m. on Friday and Saturday;
 - c. The Applicant shall not provide a bar on the proposed second-story terrace;
 - d. The Applicant agrees that speakers for the outdoor space, including the proposed second-story terrace, shall be deployed with directional placement and

amplification toward the terrace seating that shall not exceed 75dBA at a distance of three feet, and shall be placed on the lower and second-story terrace in the locations shown on Exhibit 12A of the case record;

- e. The Applicant agrees that individuals who drive to the restaurant shall have access to 82 spaces in the garage reserved for retail visitors, and that the parking garage management shall enforce the requirement that individuals parking in the retail spaces are in fact retail patrons; and
- f. The Applicant shall make a payment to the HPTF of approximately \$14,010 or eight percent of the newly proposed GFA with the first half of the payment being made at the time of building permit for the proposed restaurant use and the second half of the payment being made at the time of certificate of occupancy for the proposed restaurant use.

2. The conditions in Z.C. Order No. 17-05 remain unchanged and in effect, except that Condition No. 1 and the plans approved thereby, as modified by Z.C. Order Nos. 17-05A -17-05C, is hereby revised to read as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions in **bold** and underlined text):
 1. Project Development. 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 17-05;
 - As modified by the guidelines, conditions, and standards contained in Z.C. Order 17-05;
 - 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**
 - 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**
 - As amended by the plans submitted on September 20, 2022, marked as Exhibit 5A of the record and the additional detail regarding the canopy system marked as Exhibit 5B of Z.C. Case No. 17-05D; and
 - As modified by the guidelines, conditions, and standards herein.

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; 3rd Mayoral appointee seat vacant)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 17-05D shall become final and effective upon publication in the *D.C. Register*; that is, on December 23, 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.