

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 80-07D
Z.C. Case No. 80-07D
Georgetown University
(Modification of Consequence for a Planned Unit Development @
Square 563, Lot 16 (111 Massachusetts Avenue, N.W.))
October 14, 2021

Pursuant to notice, at its October 14, 2021 public meeting, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of Georgetown University (“University”) on behalf of Jemal’s Darth Vader L.L.C. (“Owner”) for a Modification of Consequence to revise Condition No. 5 of Z.C. Order No. 324 (“Original Order”) and Condition No. 2 of Z.C. Order No. 80-07A (“Expansion Order”) for Lot 16 in Square 563, with a street address of 111 Massachusetts Avenue, N.W. (“Property”).¹ 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 the Original Order, the Commission approved a Planned Unit Development (“PUD”) to construct a mixed-use building containing office, residential, and/or retail uses at the Property (“Building”). At the time of approval of the PUD, the Property was located in the C-3-C Zone District.
2. Pursuant to the Expansion Order, the Commission approved a three-story expansion and reskinning of the Building as well as a related Zoning Map amendment from the C-3-C Zone District to the C-4 Zone District. The Expansion Order approved office and retail use of the Property.
3. Pursuant to Z.C. Order No. 80-07B, the Commission approved a modification of consequence to the design approved in the Expansion Order.

¹ The Application also requested a waiver of the hearing requirement in the event that the Commission elected to consider the Application as a modification of significance. For the reasons discussed in this Order, the Commission considered the Application as a modification of consequence and, accordingly, did not consider the waiver.

4. Pursuant to Z.C. Order No. 80-07C, the Commission approved a two-year time extension for the filing of a building permit to vest the Expansion Order.
5. Pursuant to Z.C. Order No. 08-06A, the Property's underlying C-3-C zone was re-designated as the D-4 zone, and the C-4 zone was re-designated as the D-6 zone.

PARTIES AND NOTICE

6. The only parties to the earlier orders were Advisory Neighborhood Commissions ("ANC") 6C and 6E, the "affected" ANCs pursuant to Subtitle Z § 101.8.
7. The University served the Application on August 5, 2021 on ANC 6C and ANC 6E as well as the D.C. Office of Planning ("OP") and District Department of Transportation ("DDOT") as attested by the Certificate of Service submitted with the Application. (Exhibit ["Ex."] 2.)

THE APPLICATION

8. On August 5, 2021, the University filed the Application requesting a Modification of Consequence to authorize university use of the Building under both the Original Order and the Expansion Order. The University explained that it was finalizing a contract to acquire the Property and sought to use the Building for a mix of academic and administrative uses. While administrative office space is permitted under the existing PUD orders, other planned uses, such as classrooms and student meeting spaces, are considered "university use" and are not specifically authorized under the PUD. (Ex. 2.)
9. The University explained it had not yet decided whether to pursue the approved expansion but desired to add university use to the authorized list of uses under the Expansion Order and confirm such use would be permitted, should the University elect to pursue the expansion. (Ex. 2.)
10. The University explained that the Property is located immediately north of the Georgetown University Law Center. The acquisition of the Property would, combined with other recent developments, give the University exclusive control over a four-block stretch between H Street and E Street that would define the University's downtown "Capitol Campus." The University noted that university use is permitted by right in the high-density commercial zones that apply to the Property and the PUD.

RESPONSES TO THE APPLICATION

OP Report

11. OP submitted a report dated August 30, 2021 ("OP Report") recommending approval of the Application: (Ex. 4.)

- OP observed that the high-density commercial zones applicable to the PUD all permit university use, and nothing in the prior PUD orders evidenced an intent to specifically exclude the possibility of university use;
 - OP found that university use would benefit the surrounding area through increased pedestrian activity, particularly within the context of a stalled office market; and
 - OP concluded that university use would not be inconsistent with either of the approved PUD orders or with the Comprehensive Plan.
12. OP did not object to consideration of the Application as a Modification of Consequence.
 13. OP requested that the University clarify whether parking relief was needed for the proposed university use. By letter dated October 7, 2021 (Ex. 7.), the University confirmed that parking relief was not needed for the reasons set forth on page 2 and in footnote 1 on page 5 of the OP Report:
 - Under Subtitle A § 102.4, the Application is considered under the 2016 Zoning Regulations, pursuant to which the existing PUD is located in the D-4 zone and the approved expansion would be located in the D-6 zone, which are the analogues to the C-3-C and C-4 Zone Districts under the 1958 Zoning Regulations for this Property; and
 - Under the 2016 Zoning Regulations, no parking is required in the D zones, and so accordingly no parking is required for a change of use at the Property. Notwithstanding the foregoing, the University must continue to maintain any existing parking required by the conditions in the Original Order and Expansion Order, as set forth in Subtitle A § 102.5.

ANC Reports

14. ANC 6E submitted a written report stating that at its September 7, 2021 duly noticed public meeting, at which a quorum was present, ANC 6E voted 7-0-0 to support the Application because the university use would help activate the sidewalks and streets surrounding the Property. (Ex. 5.)
15. ANC 6C submitted a written report stating that at its September 9, 2021 duly noticed public meeting, at which a quorum was present, ANC 6C voted 6-0-0 to support the Application because the university use would be a beneficial long-term use and would not result in any detrimental impacts or conflict with the other conditions of the PUD. (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.”
3. Subtitle Z § 703.4 includes “a proposed change to a condition in the final order” as an example of a Modification of Consequence.
4. The Commission concludes that the University satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANC 6C and ANC 6E.
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 request to modify the conditions approved by the Original Order and as a request to authorize a proposed use that is otherwise permitted in the high-density commercial zones that apply to the PUD, and therefore the modification can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission concludes that because ANC 6C and ANC 6E filed a response in support of the Application prior to the Commission’s initial consideration of the Application, the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties had been met, and therefore the Commission could consider the merits of the Application at its October 14, 2021 public meeting.
7. The Commission finds that the Application is consistent with the PUD as approved by the Original Order and the Expansion Order, because the proposed university use is permitted by right in the underlying high-density commercial zones applicable to the PUD and will further goals to activate the surrounding neighborhood.

“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. 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 OP’s recommendation to approve the Application persuasive and concurs in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORTS OF THE ANCS

10. 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 (D.C. 1978).)

11. The Commission finds ANC 6C’s and ANC 6E’s recommendations to approve the Application persuasive and concurs in that judgment.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the University has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a Modification of Consequence to modify Condition No. 5 of Z.C. Order No. 324 as follows (additions in **bold** and underlined text):

5. The uses of the building shall be limited to office, university, and residential uses, and uses accessory thereto, provided that the ground floor and first cellar may be occupied by retail and service uses permitted in the C-3-C District.


In addition, Condition No. 2 of Z.C. Order No. 80-07A is modified as follows (additions in **bold** and underlined text):

2. The Project shall be an office and/or university building measuring approximately 130 feet in height, with a building density of not more than 9.2 FAR. . . .


All other conditions of Z.C. Order No. 324 and Z.C. Order No. 80-07A remain unchanged and in effect.

VOTE (October 14, 2021): 4-0-1 (upon the motion of Robert E. Miller, as seconded by Peter A. Shapiro; Robert E. Miller, Peter A. Shapiro, Anthony J. Hood, and Peter G. May to **APPROVE**; representative of the Architect of the Capitol vacant and not voting).

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. 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.