

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-20B
Z.C. CASE NO. 15-20B
TBSC Owner I, LLC
(Modification of Consequence of a Consolidated PUD and Related Zoning Map
Amendment @ Square 620, Lots 250, 893, 894, 895, 898, 900, 904, and 905)
July 30, 2018

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on July 30, 2018. At that meeting, the Commission approved the application of TBSC Owner I, LLC (“Applicant”) for a modification of consequence of the consolidated planned unit development (“PUD”) and related Zoning Map amendment application approved by Z.C. Order No. 15-20 for Square 620, Lots 250, 893, 894, 895, 898, 900, 904, and 905 (collectively the “Property”).¹ The modification request was made pursuant to Subtitle Z, Chapter 7 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

FINDINGS OF FACT

Background

1. Pursuant to Z.C. Order No. 15-20, dated May 9, 2016 (the “Order”), the Commission approved a first-stage PUD and related map amendment from the R-4 Zone District to the C-3-C Zone District for the Property. The Property consists of approximately 6.7 acres, and is bounded by M, First, and L Streets and First Place, N.W. The Property is zoned C-3-C by virtue of the zoning map amendment. Upon the implementation of Zoning Regulations of 2016, the C-3-C Zone District was converted to the MU-9 zone district, but the PUD-related zoning for this PUD remained.

¹ Originally, the Property consisted of Lots 248, 249, 250, 893, 894, and 895. Lots 248 and 249 were extinguished and became part of Lot 898, as shown on the Assessment and Taxation (“A&T”) Plat, Square 620, Number 3875-V filed in records of the Office of the Surveyor of the District of Columbia. The A&T Plat also created Lots 899, 900, 901, 902, and 903. Lot 899 was subdivided into Lots 904 and 905. Lots 901, 902, and 903 reverted to the adjacent lots and are not part of the PUD site.

2. The Order approved the redevelopment of the Property with approximately 1,269,165 square feet of residential use, generating approximately 1,131 dwelling units, and approximately 49,420 square feet of non-residential uses. The development is organized into five buildings constructed on five theoretical lots, divided between two parcels – the North Parcel and the South Parcel. The building heights will range from 62.5 feet to 110 feet; the overall density of the PUD will be 4.62 floor area ratio (“FAR”), including the area for Pierce Street, which is a private street, or 5.24 FAR excluding said street.
3. Pursuant to Z.C. Order No. 15-20A, dated May 8, 2018, the Commission granted a two-year extension for the deadline for filing a second-stage PUD application on the South Parcel, from June 30, 2017, to June 30, 2019. If such a second-stage application is filed by that date, the first-stage approval shall remain valid until June 30, 2023, as to the remaining portions of the PUD.
4. The parties in Z.C. Case No. 15-20 were the Applicant and Advisory Neighborhood Commission (“ANC”) 6E, the ANC in which the Property is located.

Modification Request

5. By letter dated June 5, 2018, and pursuant to 11-Z DCMR § 703, the Applicant submitted a request for a what it characterized as a minor modification to modify Condition B.2.e.i. of the Order as follows:

<p>Condition B.2.e.i.</p> <p><u>Demolition of Existing Structures.</u> Within 10 days of applying for a raze permit for any structure on the Property, the Applicant shall notify the Sursum Corda Households of its raze permit application. Certification of said notice, including a copy of same, shall be furnished to DCRA prior to the issuance of a raze permit for any structure of the Property;</p>	<p>Condition B.2.e.i.</p> <p><u>Demolition of Existing Structures.</u> Within 10 40 days of applying for a raze permit for any structure on the Property, the Applicant shall notify the Sursum Corda Households of its raze permit application. Certification of said notice, including a copy of same, shall be furnished to DCRA prior to the issuance of a raze permit for any structure of the Property.</p>
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6. The Applicant provided a Certificate of Service, which noted that the Applicant served ANC 6E with a copy of the application. (Exhibit [“Ex.”] 3.)
7. The Applicant sought the modification because it was unable to comply with the original condition because it did not have a complete list of households. Because the Applicant feared that this would result in a denial of the permits needed to go forward with the project, it sought to change the condition to cure its violation.

8. At its public meeting on June 25, 2018, the Commission determined that the proposed modification was not a minor modification, but a modification of consequence within the meaning of 11-Z DCMR §§ 703.3 and 703.4, and that no public hearing was necessary pursuant to 11-Z DCMR § 703.1. The Commission also indicated that the modification process cannot be used to cure a violation of its orders. Doing so would interfere with the Department of Consumer and Regulatory Affairs (“DCRA”) discretion to enforce violations of Commission’s orders through the imposition of Civil Infraction Act fines.
9. However, the Commission did not want the Applicant’s delay in providing notice to prevent it from receiving the needed permits. The Commission therefore suggested language to accomplish that and pursuant to 11-Z DCMR § 703.17(c)(2), established a timeframe for the parties in the original proceeding to file a response in opposition to or in support of the request and for the Applicant to respond thereto (and to also to respond to the Commission’s suggested revision to the modification), and scheduled the application for deliberations.
10. ANC 6E submitted a written report to the record, which states that at its regularly scheduled, properly noticed meeting on July 3, 2018, with a quorum present, ANC 6E voted unanimously in support of the Applicant’s original modification request. (Ex. 8.) The ANC report stated no issues or concerns.
11. On July 13, 2018, the Applicant filed a submission providing the following revised modification to Condition No. B.2.e.i., with the new language shown in bold and underlined text:

Demolition of Existing Structures. Within 10 days of applying for a raze permit for any structure on the Property, the Applicant shall notify the Sursum Corda Households of its raze permit application. Certification of said notice, including a copy of same, shall be furnished to DCRA prior to the issuance of a raze permit for any structure of the Property. **Violations of this condition shall not result in the denial of a raze permit, building permit, or certificate of occupancy for the PUD.**
12. The Applicant also advised the Commission that the same lack of information that resulted in its noncompliance with Condition B.2.e.i. also caused it to violate Condition No. B.2.a, which among other things required the Applicant “upon application of a raze permit” to certify to the DCRA the list of Sursum Corda Household and their contact information. The Applicant sought to change the phrase “upon application of a raze permit” to “prior to the issuance of,” thereby again seeking to use the modification process to cure a violation
13. Because the Applicant sought to add an additional modification to this Consent Calendar item, the Commission first needed to determine whether the new

modification was also a modification of consequence, and concluded that it was. The Commission also decided that it could immediately deliberate on both the new and the original modification without hearing again from ANC 6E because the ANC's support for the new modification could be inferred from its support of the initial request.

14. The Commission then approved that the revised modification for No. B.2.e.i., and that and Condition No. B.2.a. could be modified using similar language.
15. The Commission finds neither change impact the use, proffered public benefits and amenities, or required covenants, and the changes do not create any additional relief or flexibility from the Zoning Regulations not previously approved. Although the Applicant did not provide the information when required, the raze permit has not issued and therefore though the letter of the condition was violated, its intent was not.

CONCLUSIONS OF LAW

1. Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized to make "modifications of consequence" to final orders and plans without a public hearing. A modification of consequence means "a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance." (11-Z DCMR § 703.3.) Examples of modifications of consequence "include, but are not limited to, a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission." (11-Z DCMR § 703.4.)
2. The Commission concludes that the modifications to the Order, as described in the above Findings of Fact, are modifications of consequence and, therefore, can be granted without a public hearing.
3. The Commission cannot grant a modification for the purpose of curing a violation of a condition of approval, but can do so to prevent a violation from resulting in the denial of a permit when the violation did not frustrate Commission's intent when it imposed the condition. Here, the raze permit was not issued and the information has or will be given before it does.
4. The Commission is required under D.C. Official Code. § 1-309.10(d)(3)(A) (2012 Repl.) to give great weight to the issues and concerns raised in the written report of the affected ANC(s). In this case the affected ANC, ANC 6E, voted to support the original modification request without stating any issues and concerns. (Ex. 8.) The Commission did not seek the ANC's recommendation with respect to the second modification because its potential impact would be the same as the first, which the ANC supported,

5. The Commission is required under § 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 (2001)), to give great weight to OP's recommendations. OP did not submit a report to the record.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a modification of consequence to the consolidated PUD and related Zoning Map amendment application approved in Z.C. Case No. 15-20. The conditions in Z.C. Order No. 15-20, as amended by Z.C. Order No. 15-20A, remain unchanged, except as follows:

1. **Condition No. B.2.a. of Z.C. Order No. 15-20 is hereby amended to read as follows:**

Reserved Units. The Applicant shall construct 136 residential units on the South Parcel during the first phase of development for the PUD, which shall be reserved for current Sursum Corda households currently residing at the Property ("Sursum Corda Households") (the "Reserved Units"). Upon application of a raze permit for any of the existing structures on the Property, the Applicant shall certify to the DCRA the list of Sursum Corda Household and their contact information. Violations of this condition shall not result in the denial of a raze permit, building permit, or certificate of occupancy for the PUD.

2. **Condition No. B.2.e.i. of Z.C. Order No. 15-20 is hereby amended to read as follows:**

Demolition of Existing Structures. Within 10 days of applying for a raze permit for any structure on the Property, the Applicant shall notify the Sursum Corda Households of its raze permit application. Certification of said notice, including a copy of same, shall be furnished to DCRA prior to the issuance of a raze permit for any structure of the Property. Violations of this condition shall not result in the denial of a raze permit, building permit, or certificate of occupancy for the PUD.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. 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 identify or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic

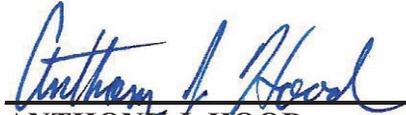
information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On July 30, 2018, upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on September 14, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING