

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
Z.C. ORDER NO. 12-14C  
Z.C. Case No. 12-14C  
3<sup>rd</sup> and M LLC, 3<sup>rd</sup> and K, LLC, and Park Inn Associates, LP  
(Modification of Consequence for PUD @ Square 542, Lots 817, 821,  
816, 883, 2124-2251 [300 K Street, S.W.]  
January 13, 2020

At its properly noticed public meetings held on December 9, 2019 and January 13, 2020, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of 3<sup>rd</sup> and M, LLC, 3<sup>rd</sup> and K, LLC, and Park Inn Associates, L.P., (together, the “Applicant”) for a modification of consequence to the conditions and approved plans of the second building of the consolidated planned unit development (“PUD”) originally approved by Z.C. Order No. 12-14/12-14A<sup>1</sup> (the “Original Order”), for Lots 817, 821, 816, 883, and 2124-2251 in Square 542, with a street address of 300 K Street, S.W. (the “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**

**Background**

1. Pursuant to the Original Order, the Commission granted the Applicant consolidated approval for the Property (the “Approved PUD”) and a related Zoning Map amendment to construct two new multifamily apartment buildings:
  - The South Building with 11 stories, 187 residential units, and 111 underground parking spaces; and
  - The North Building, with 11 stories, 175 units, and 174 underground parking spaces.
2. The South Building has been completed in accordance with the Original Order and received a certificate of occupancy on April 27, 2018.

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<sup>1</sup> Z.C. Case No. 12-14 applied to the North Building and Z.C. Case No. 12-14A to the South Building. The Commission heard the two cases together with a single shared record and order.

3. Pursuant to Z.C. Order No. 12-14B, the Commission granted a two-year time extension of the deadline established in the Original Order to file a building permit for the North Building (within two years of the issuance of the first certificate of occupancy for the first building constructed under the Approved PUD) to April 27, 2022, with construction to start by April 27, 2024.

### **Parties**

4. The parties to Z.C Case No. 12-14/12-14A, other than the Applicant, were Advisory Neighborhood Commission (“ANC”) 6D, the “affected” ANC pursuant to Subtitle Z § 101.8; the Carrollsburg A. Condominiums (“CAC”); and the Waterfront Towers Condominium Association (“WTCA”).

### **The Application**

5. On October 3, 2019, the Applicant filed the Application requesting a modification of consequence to authorize modifications to the plans and conditions approved by Z.C. Order No. 12-14/12-1A to change:
  - The number of residential units; and
  - The number of parking spaces to reduce the approved 174 underground spaces to a range of 86-111 underground spaces. (Exhibit [“Ex.”] 2.)
6. The Applicant subsequently withdrew the request to modify the number of residential units. (Ex. 7)
7. The Applicant provided evidence that it served the Application on ANC 6D, the Office of Planning (“OP”), the CAC board, and WTCA’s attorney, by October 4, 2019, as attested by the certificate of service submitted with the Application. (Ex. 3.)
8. The proposed range of parking spaces, from 86 to 111, exceeds the 64 required by the Zoning Regulations.
9. The Applicant stated that only 55 of the 111 parking spaces built at the South Building were leased when the South Building’s occupancy stabilized in July 2019.
10. The requested modification of consequence would allow the Applicant to provide a range of parking spaces in the North Building more commensurate with the demand for parking spaces experienced in the South Building.
11. The Applicant asserts that the proposed change will not have an adverse impact on traffic and parking in the neighborhood because:
  - Condition No. B.3 to the Original Order stipulates that each residential lease shall include a provision prohibiting the tenant from applying for off-site parking; and
  - It is unlikely that there would be demand for the parking spaces proposed to be removed.

12. OP submitted a report on December 4, 2019 (the “OP Report”<sup>2</sup>), stating no objection to the Application being considered as a modification of consequence and recommending approval of the Application because: (Ex. 6.)
  - The proposed range of parking spaces still exceeds the requirement in the Zoning Regulations; and
  - The proposed modification should not have a significant negative impact on the surrounding area due to the location near the Waterfront Metro station, the presence of other non-automotive transportation options in the area, and the limited demand for parking observed at the South building.
13. ANC 6D submitted a written report (the “ANC Report”) stating that at its duly noticed public meeting of December 9, 2019, at which a quorum was present, the ANC voted to support the Application despite its general disfavor for reduced parking because it recognized that District residents are moving away from cars to alternative transportation methods. (Ex. 9.) The ANC Report requested that the Applicant make any vacant spaces available to rent to the general public and conditioned the ANC’s support for the Application on the Applicant’s execution of a memorandum of agreement (“MOA”) with WTCA.
14. WTCA submitted a MOA signed with the Applicant that includes:
  - A “New Landscape Plan” for the courtyard shared with the Applicant’s two new residential buildings and WTCA;
  - An agreement by the Applicant to pay half the fees to maintain the courtyard during the two-year time extension;
  - The extension of a “Construction Committee” composed of the Applicant and WTCA representatives; and
  - The Applicant’s proposal to offer Waterfront Towers residents the monthly contracts to park under the North and South Buildings. (Ex. 8.)

### **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” and “a redesign or relocation of architectural elements” as examples of modifications of consequence.

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<sup>2</sup> OP had filed an initial report that did not review the Application because it required clarification about the Applicant’s plans to modify the number of residential units, which was withdrawn. (Ex. 5.)

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, CAC, and WTCA.
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 and architectural elements approved by the Original Order, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission concludes that because ANC 6D and WTCA each filed a response to the Application, the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties to the original proceeding had been met, and therefore the Commission could consider the merits of the Application at its January 13, 2020 public meeting.
7. The Commission finds that the Application is consistent with the Approved PUD as authorized by the Original Order, because the Application will not substantially affect the Approved PUD based on the demonstrated lower demand for parking following the delivery of the South Building.

**“Great Weight” to the Recommendations of OP**

8. The Commission is required to give “great weight” to the recommendation 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 Y § 405. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
9. The Commission finds persuasive OP’s recommendation that the Commission approve the Application and therefore concurs in that judgment.

**“Great Weight” to the Written Report of the ANC**

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 Y § 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 (1978) (citation omitted).)
11. The Commission finds the ANC Report’s support for 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 Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a modification of consequence to modify Z.C. Order No. 12-14/12-14A, as extended by Z.C. Order No. 12-14B, to reduce the parking requirements for the North Building to a range of 86-111 parking spaces by revising Condition No. A.1 to read as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions in **bold** and underlined text), with all other conditions of Z.C. Order No. 12-14/12-14A unchanged and in effect:

A.1 The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 41, 50, 59B, 63A, and 63B **of the record in Z.C. Case No. 12-14/12-14A**, as modified by **the plans dated September 17, 2019 (Exhibit 2B in Z.C. Case No. 12-14C) only to the extent of reducing the parking spaces for the North Building to a range of 86-111 (pp 2, 4-5, and 11), and as further modified by** the guidelines, conditions, and standards of this Order.

**VOTE (January 13, 2020): 5-0-0** (Anthony J. Hood, Michael G. Turnbull, Peter G. May, Robert E. Miller, and Peter A. Shapiro, to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is, on July 3, 2020.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
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**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.