

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 04-14F
Z.C. Case No. 04-14F
Riverfront Holdings II, LLC
(Modification of Consequence of Second-Stage PUD @ Square 708)
June 10, 2019

Pursuant to notice, at its June 10, 2019 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application of Riverfront Holdings II, LLC (the “Applicant”) for a Modification of Consequence (the “Application”) of a second-stage planned unit development (“PUD”) approved by Z.C. Order No. 04-14, as modified by Z.C. Order Nos. 04-14B, 04-14D, and 04-14E, for Lot 15 in Square 708 (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. A first-stage PUD was approved for the Property in 1998 pursuant to Z.C. Order No. 850. A related second-stage approval was granted in 1999 pursuant to Z.C. Order No. 910, which was subsequently modified and extended by Z.C. Order Nos. 910-A and 910-B.
2. Pursuant to Z.C. Order No. 04-14, the Commission granted the Applicant second-stage¹ PUD approval and a related map amendment (the “Approved PUD”) for the site located on 253,500 square feet of land in Squares 707 (Lots 800, 801, and 802); 708 (Lot 809); 708E (Lots 807 and 808); and 708S (Lot 806) (the “PUD Site”). The PUD Site included four different developments – Phases I and III for office buildings, Phase II for a residential building (the subject of the Application), and Phase IV for a hotel.
3. In Z.C. Order No. 04-14A, the Commission approved a two-year time extension for the Approved PUD.

¹ The Applicant filed the second-stage PUD application to reflect changes required by the construction of the nearby Nationals Baseball Stadium.

4. In Z.C. Order No. 04-14B, the Commission modified the second-stage approval for Phase I of the Approved PUD. The Commission also reverted to and modified the first-stage approval for Phases II, III, and IV of the Approved PUD.
5. In Z.C. Order No. 14-14C, the Commission approved a one-year time extension for the Approved PUD.
6. In Z.C. Order No. 04-14D, the Commission granted second-stage PUD approval for Phase II.
7. In Z.C. Order No. 04-14E, the Commission granted a modification of consequence to the second-stage PUD approval for Phase II. The modification permitted the redesign and relocation of certain architectural elements, including the residential signage, and modified the related Condition No. 1. (Exhibit [“Ex.”] 1B.)

Parties

8. The only party to the Z.C Case No. 04-14, other than the Applicant, was Advisory Neighborhood Commission (“ANC”) 6D, the “affected” ANC pursuant to Subtitle Z § 101.8.

The Application

9. On April 18, 2019, the Applicant filed the Application requesting a modification of consequence to authorize modifications to the plans approved by the Approved PUD to allow the following changes to the residential signage plan for Phase II: (Ex. 1C1-1C2.)
 - a. New signage will include vertical signage with lettering applied directly to the building;
 - b. The letters will be aluminum with face-lit acrylic lenses;
 - c. The letters will each be four feet in height and placed on floors 9-13 on the northern façade;
 - d. The letters will be affixed to the metal paneling and will be internally lit;
 - e. The letters will be set back a minimum of 13 inches from the windows of the residential units; and
 - f. The lights are front lit channel letters.
10. The Application noted that the proposed changes resulted from the evolution of the building’s branding and that the proposed signage complies with the D.C. Building Code’s signage regulations.

11. The Applicant provided evidence that on April 18, 2019, it served the Application on ANC 6D and the Office of Planning (“OP”), as attested by the Certificate of Service submitted with the Application. (Ex. 1.)
12. OP submitted a report dated May 6, 2019, stating no objection to the Application being considered as a Modification of Consequence and recommending approval of the Application. (Ex. 4.)
13. ANC 6D submitted a written report in support of the Application that it adopted at its duly noticed public meeting held on May 13, 2019. (Ex. 5.) The ANC report did not raise any issues or concerns with the Application.

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.
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 request to modify a final condition and redesign of the 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, the only party other than the Applicant to the Approved PUD, had 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 June 10, 2019 public meeting.
7. The Commission finds that the modification proposed by the Application is consistent with the Approved PUD because the proposed changes to the signage plans are relatively modest and will not alter any of the material facts upon which the Commission based its original approval of the PUD.

“Great Weight” to the Recommendations of OP

8. D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8 require the Commission to give “great weight” to the recommendations contained in the OP Report.
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 and therefore concurs in that judgment.

“Great Weight” to the Written Report of the ANC

10. D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.) and Subtitle Z §406.2 require the Commission to give “great weight” to the issues and concerns contained in the written report of an affected ANC. To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. 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).)
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 revise the plans approved by Z.C. Order Nos. 04-14 through 04-14E and Condition No. 1 therein in accordance with the plans in the case record of Z.C. Case No. 04-14F at Ex. 1CA-1C2.

All conditions contained in Z.C. Order No. 04-14, as amended by Z.C. Order Nos. 04-14B, 0-14D, and 04-14E, remain unchanged and in effect, except that Condition No. 1 is revised as follows (deletions in **bold** and ~~strikethrough~~; additions in **bold** and underlined):


1. The PUD shall be developed in accordance with the plans prepared by Davis Buckley Architects and Planners, dated February 28, 2008, ~~in the record~~ at Exhibit 83, as supplemented by the plans dated May 1, 2008 ~~in the record~~ at Exhibit 100 (collectively the "Plans") in Z.C. Case No. 04-14 as modified by ~~the guidelines, conditions, and standards herein;~~
 - a. The Architectural Plans and Elevations dated October 10, 2012, at Exhibit 38A1-38A2 in Z.C. Case 04-14B;
 - b. The Architectural Plans and Elevations dated January 30, 2017, at Exhibit 30B1-30B7 in Z.C. Case 04-14D;
 - c. The Architectural Plans and Elevations dated November 20, 2017, at Exhibit 1C, 6A1-6A2 in Z.C. Case 04-14E;

d. The Architectural Plans and Elevations dated April 9, 2019, at Exhibit 1CA-1C2 in Z.C. Case 04-14F; and


e. The guidelines, conditions, and standards below.

VOTE (June 10, 2019): 4-0-1 (Peter A. Shapiro, Vice Chairman Robert E. Miller, Chairman Anthony J. Hood, and Peter G. May to **APPROVE**; Michael G. Turnbull abstaining).

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on November 8, 2019.



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. SEX UAL 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.