

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-14F
Z.C. Case No. 06-14F
Washington Gateway Three, LLC
(Technical Correction to Z.C. Order Nos. 06-14, 06-14A, 06-14B, 06-14C, and 06-14D
Washington Gateway – PUD @ Square 3584)
September 17, 2018**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on September 17, 2018. At the meeting, the Commission approved an application of Washington Gateway Three, LLC (“Applicant”) for a technical correction to Z.C. Order Nos. 06-14, 06-14A, 06-14B, 06-14C, and 06-14D (“Orders”). Because the modification to the Orders were technical in nature, a public hearing was not conducted. The Commission determined that the application was properly before it under the provisions of Subtitle Z § 703 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

FINDINGS OF FACT

1. Pursuant to Z.C. Order No. 06-14, dated February 12, 2007, and effective on June 29, 2007, the Commission approved a planned unit development (“PUD”), known as Washington Gateway, at the northeast intersection of New York and Florida Avenues, N.E., in Square 3584.
2. The PUD was originally approved as a mixed-use development consisting of residential, hotel, office, and retail uses. In accordance with the modification granted under Z.C. Order No. 06-14B, the first phase of the PUD, was developed with an apartment house consisting of 400 units and 5,000 square feet of ground-floor retail. Under Z.C. Order No. 06-14D, for the second phase of the project, the PUD was modified to allow the North Tower used for residential use rather than the approved office and the South Tower was reconfigured and redesigned; also the applicant was granted flexibility to have either office or residential use in the South Tower if approved by the Commission as a modification of consequence, which the Applicant sought in Z.C. Case No. 06-14E.
3. Pursuant to Z.C. Order No. 06-14A, dated June 8, 2009, and effective on June 19, 2009, the PUD approval was extended to June 29, 2011 and an application for a building permit for one of the buildings was filed by June 29, 2013, and construction was commenced by June 29, 2014.

4. Pursuant to Z.C. Order No. 06-14D, the Commission bifurcated the timing requirements for the North Tower and South Tower, such that the approval of the PUD modification for each tower is valid until May 4, 2020, and construction for each tower is to commence no later than May 4, 2021. The Applicant may seek extensions of time for each tower, respectively, in accordance with Subtitle Z § 705 of the Zoning Regulations.
5. By letter dated August 21, 2018 (Exhibit [“Ex.”] 1), the Applicant applied for a technical correction to the Orders pursuant to Subtitle Z § 703 of the Zoning Regulations. The purpose of the technical correction was to change the land area cited for the PUD site from 134,665 square feet to 134,592 square feet.
6. The Orders incorrectly identify the land area of the PUD site as 134,665 square feet. The Subdivision Plat for the PUD site and the Office of Tax and Revenue records indicate that the land area is 134,592 square feet. (Ex. 1A, 1B.) Also, the original PUD plans and statement identify the land area of the PUD site as 134,592 square feet. It was not until the final written order, Z.C. Order No. 06-14, that the land area was identified as 134,665 square feet, which was then used in the subsequent orders for the PUD.
7. Pursuant 11-Z DCMR § 703.13, the Applicant was required to formally serve a copy of the application on all parties to the original proceeding while it filed the application with the Office of Zoning. Other than Advisory Neighborhood Commissions (“ANC”) 5E, 6C, and 5D, there were no other parties to the original proceeding. As noted in the Certificate of Service attached to the application, the subject application was served on ANCs 5E, 6C, and 5D on August 21, 2018. (Ex. 1.)
8. The Office of Planning (“OP”) reviewed the request for a technical correction. By report dated September 7, 2018, OP recommended approval of the technical correction.¹ (Ex. 5.)
9. On September 17, 2018, at its regular monthly meeting, the Commission reviewed the application and granted approval of the requested technical correction.

CONCLUSIONS OF LAW

Pursuant to 11-Z DCMR § 703, the Commission is authorized to approve technical corrections to approved final orders through a consent calendar procedure without a public hearing. The Commission concludes that the modifications described herein are technical in nature, and the request falls within the scope of a technical correction made pursuant to 11-Z DCMR § 703.

The Commission is required by § 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) to give great weight to the

¹ OP’s report also addressed the Applicant’s request for a modification of consequence in Z.C. Case No. 06-14E. However, the Applicant’s request for a modification of consequence is not the subject of this Order and is a separate case before the Commission. (*See* Z.C. Case No. 06-14E.)

recommendations of OP. OP recommended approval of the application as a technical correction, and the Commission concurs in this recommendation.

The Commission is required under § 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)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The affected ANCs did not submit a written report to the record. Because the ANC expressed no issues or concerns, there is nothing for the Commission to give great weight to. (*See* *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

DECISION


In consideration of the Findings of Fact and Conclusions of Law contained herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a technical correction to Z.C. Order Nos. 06-14, 06-14A, 06-14B, 06-14C, and 06-14D to change the land area cited for the PUD site from 134,665 square feet to 134,592 square feet.

On September 17, 2018, upon the motion of Commissioner Turnbull as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **ADOPT** this application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull; Peter A. Shapiro, not present, not voting).

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 November 9, 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. BORDIN
DIRECTOR
OFFICE OF ZONING