

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-34K
Z.C. Case No. 08-34K
Capitol Crossing IV LLC
(Modification of Significance to First-Stage PUD @ Square 566, Lot 861 –
Capitol Crossing Center Block)
October 24, 2019

Pursuant to notice, at its public hearing held on October 24, 2019, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) from Capitol Crossing IV LLC¹ (the “Applicant”) for a modification of significance of Z.C. Order No. 08-34 (the “Original Order”), as extended by Z.C. Order No. 08-34B, and as modified by Z.C. Order Nos. 08-34A, 08-34C, and 08-34E through 08-34H, to revise Decision No. A.4 to modify the first-stage planned unit development (“PUD”) approved by the Original Order to add lodging and college/university educational uses to the permitted uses of the Commercial Building for Lot 861 in Square 566 (part of Record Lot 50) (the “Property”).

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, Subtitle Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

NOTICE

1. On August 6, 2019, the Office of Zoning (“OZ”) sent the notice of the October 24, 2019, public hearing to: (Exhibit [“Ex.”] 17.)
 - Advisory Neighborhood Commissions (“ANCs”) 2C and 6C, the “affected ANCs” pursuant to Subtitle Z § 101.8;
 - ANC Single Member Districts (“SMDs”) 2C03 and 6C02, in which the Property is located;
 - Office of Planning (“OP”);

¹ Capitol Crossing IV, LLC, as the current owner of the Property, is the successor to the applicant in the Original Order, Center Place Holdings, LLC, on behalf of the District of Columbia, acting through the Office of the Deputy Mayor for Planning and Economic Development.

- District Department of Transportation (“DDOT”);
 - Department of Energy and Environment (“DOEE”);
 - Department of Consumer and Regulatory Affairs (“DCRA”);
 - Council of the District of Columbia; and
 - Property owners within 200 feet of the Property.
2. OZ also published notice of the October 24, 2019, public hearing in the August 16, 2019, *D.C. Register* (66 DCR 010526) as well as through the calendar on OZ’s website. (Ex. 16.)

PARTIES

3. The Applicant and ANCs 2C and 6C were automatically parties per Subtitle Z § 403.5.
4. The Commission received no requests for party status.

PRIOR APPROVALS

5. Pursuant to the Original Order, the Commission approved:
- A first-stage PUD (the “Approved First-Stage PUD”) for land and air rights above the Center Leg Freeway in an area generally bounded by Massachusetts Avenue, N.W. to the north, 2nd Street, N.W. to the east, E Street, N.W. to the south, and 3rd Street, N.W. to the west (the “Overall PUD Site”), divided into the:
 - North Block – Square 564, Lots 858 and 859;
 - Center Block – Square 566, Lots 860-863 and 7000; and
 - South Block – Square 658, Lots 862-864 and 7000; and
 - A consolidated PUD (the “Approved Consolidated PUD,” and collectively with the Approved First-Stage PUD, the “Approved Overall PUD”), for:
 - The following portions of the Overall PUD Site:
 - Platform and base infrastructure,
 - Site plan;
 - Landscaping and streetscape design;
 - Mix of uses, height, and density of each building;
 - Construction of all below-grade parking, concourse, and service levels; and
 - The North Block; and
 - A related Zoning Map amendment to the C-4 Zone District (now D-4) for the overall PUD Site.
6. The Original Order approved an approximate gross floor area (“GFA”) of 2,226,625 square feet for the Approved Overall PUD, or 8.74 floor area ratio (“FAR”) based on the Overall PUD Site, including:
- Approximately 1,910,386 square feet of GFA devoted to office uses;
 - A minimum of 62,687 square feet of GFA devoted to retail uses;
 - Approximately 180,384 square feet of GFA devote to residential uses; and
 - Approximately 73,168 square feet of GFA devoted to institutional uses related to the Holy Rosary Church and the Jewish Historical Society.

7. As part of the Approved First-Stage PUD, the Original Order approved the Center Block to be developed with:
 - A commercial building with approximately 297,311 square feet of GFA devoted to office and ground-floor retail uses, and a maximum building height of 130 feet and 12 stories on the Property (the “Commercial Building”);
 - A residential building with approximately 150 units and ground-floor retail; and
 - Facilities for the Holy Rosary Church.
8. Prior to filing the Application, the Commission modified the Original Order as follows:
 - A time extension for a portion of the Approved Consolidated PUD (Z.C. Order No. 08-34B);
 - Center Block – a second-stage PUD approval for a portion of the Center Block involving the Holy Rosary Church facilities (Z.C. Order No. 08-34C);
 - North Block – modifications to the Consolidated PUD (Z.C. Order Nos. 08-34E and 08-34G); and
 - South Block – second-stage PUDs and a modification (Z.C. Case Nos. 08-34A, 08-34F, and 08-34H).²

II. THE APPLICATION

9. The Application, filed on July 1, 2019, requested a waiver from Subtitle Z § 400.9’s requirement that a public hearing to consider setting down an application occur at least 35 days after the filing of the application, unless the applicant, in compliance with Subtitle Z § 400.10, files evidence that OP and the affected ANC(s) consent. The Application included consent for the waiver from OP and the affected ANCs 2C and 6C. (Ex. 3, 5, 13.)
10. The proposed lodging and college/university educational uses are permitted as a matter of right in the C-4 (now D-4) zone applicable to the Property by the Approved Overall PUD. (Subtitles I § 302.1 and U §§ 510.1(o), 512.1(a), 515.1(a), and 515.1(c).)
11. The Application stated that the Applicant would identify the specific lodging and college/university educational uses use(s) for the Commercial Building and submit corresponding architectural drawings as part of a second-stage PUD application for the Property.
12. The Application did not propose any changes to the overall height, bulk, or density of the Commercial Building as established by the Approved First-Stage PUD.
13. The Application included an analysis that concluded that the Application would not be inconsistent with the Comprehensive Plan (the “CP”) because the proposed lodging and college/university educational uses at the Property would not be inconsistent with the CP’s Generalized Policy Map (“GPM”), Future Land Use Map (“FLUM”), Guiding Principles,

² Z.C. Case Nos. 08-34D and 08-34I were withdrawn.

City-Wide Elements, and the Central Washington Area Element applicable to the Property (Ex. 2C).

The TAM

14. The Applicant filed an April 15, 2019, Transportation Assessment Memorandum prepared by Wells + Associates (“TAM”) that looked at the anticipated trip generation, parking demand, and loading for the approved office use in comparison with the proposed lodging and college/university educational uses and concluded that adding the proposed lodging and college/university educational use to the Approved First-Stage PUD will not have an adverse transportation impact because: (Ex. 2F.)
- The anticipated trip generation for the proposed college/university educational use will generate three more vehicle trips than the approved office use during the morning peak hours and one more vehicle trip than the office use during the afternoon peak hours. This minimal increase in vehicle trip generation is below DDOT’s threshold for a traffic impact analysis and is not considered significant;
 - The anticipated trip generation for the proposed lodging use will result in 12 more vehicle trips than the approved office use during the morning peak hours and 16 fewer vehicular trips than the approved office use during the afternoon peak hours;
 - Parking demand for a lodging use within the District is significantly less (approximately 0.20 vehicles per room) than for office use (approximately 3.3 vehicles per 1,000 square feet);
 - The parking requirements for the proposed lodging (approximately 33 parking spaces) and college/university educational uses (no parking requirements) are less than those of the approved office use (approximately 154 parking spaces);
 - The total number of loading berths for the proposed lodging (one 30-foot berth, one 55-foot berth, and one 20-foot service/delivery space) and college/university educational use (one 30-foot berth, one 55-foot berth, and one 20-foot service/delivery space) are less than that required for the approved office use (three 30-foot berths and one 20-foot service/delivery space). The Approved First-Stage PUD included a 55-foot berth already in a shared and centralized below-grade facility; and
 - As part of the second-stage PUD application, the Applicant will be required to work with DDOT to complete any required studies and determine what, if any, mitigation is required to ensure that there are no adverse impacts as a result of the change in use.

The Applicant’s Public Hearing Testimony

15. At the October 24, 2019, public hearing, the Applicant presented a brief PowerPoint summary of the Application and otherwise rested on the materials submitted to the record (Ex. 25; Transcript of the October 24, 2019, Public Hearing [“Tr.”] at 7.)

III. RESPONSES TO THE APPLICATION

OFFICE OF PLANNING

OP Setdown Report

16. OP submitted a July 18, 2019, report that recommended the Commission set down the Application for a public hearing and noted that the Commercial Building “would continue

to have the approved ground floor retail use and there would be no change to the building's approved overall height, bulk and density." (Ex. 13.)

OP Hearing Report

17. OP submitted an October 11, 2019, hearing report (the "OP Hearing Report") recommending the Commission approve the Application because the proposed mix of uses for the Commercial Building would be consistent with "a goal of the Capitol Crossing PUD to provide daytime and nighttime activation of the neighborhood" and would be consistent with the intent of the Approved Overall PUD. (Ex. 23.)

OP's Public Hearing Testimony

18. OP testified in support of the Application at the public hearing and reiterated OP's recommendation to approve the Application and otherwise referenced OP's report in the case record. (Tr. at 7-8.)

OTHER DISTRICT AGENCIES

19. The OP Hearing Report listed the District agencies to which OP had referred the Application for review and comment as follows:
 - DOEE;
 - Department of Housing and Community Development ("DHCD");
 - DDOT;
 - Department of Parks and Recreation ("DPR");
 - Department of Public Works ("DPW");
 - DC Public Schools ("DCPS");
 - DC Public Libraries ("DCPL");
 - Fire and Emergency Medical Services Department ("FEMS");
 - Metropolitan Police Department ("MPD"); and
 - DC Water.
20. Only DOEE and DDOT responded to the Application.

DEPARTMENT OF ENERGY AND ENVIRONMENT (DOEE)

21. The OP Hearing Report included comments DOEE sent electronically to OP on September 27, 2019, that:
 - Encouraged the Applicant to increase the use of renewable energy and maximize opportunities for energy efficiency for the Commercial Building; and
 - Stated that the Commercial Building would undergo full regulatory compliance review by DOEE and other appropriate agencies during the permit application process.
22. DOEE did not testify at the public hearing.

DEPARTMENT OF TRANSPORTATION

23. DDOT submitted a September 27, 2019, report (the “DDOT Report”) that stated no objections to the Application based on DDOT’s conclusions that: (Ex. 22.)
- The TAM showed “relatively minor differences” in trip generation and loading for the proposed lodging and college/university educational uses compared to the approved office use, and a lower parking requirement for these proposed uses than the approved office use; and
 - The operational and curbside needs of each of the proposed additional uses would be different and influenced by the site design of the Commercial Building to be addressed during the second-stage PUD application process in which DDOT would work with the Applicant to perform any additional analysis on the selected land use and specific site design.
24. DDOT did not testify at the public hearing.

AREA NEIGHBORHOOD COMMISSIONS (“ANCs”)

25. ANC 2C submitted a June 28, 2019, letter (the “ANC 2C Report”) stating that at its regularly scheduled, duly-noticed June 11, 2019, public meeting, with a quorum of three out of three commissioners present, it voted to support the Application based on ANC 2C’s conclusions “that the proposed modification will be an overall benefit to the PUD and the surrounding area. The increased variety of commercial uses will activate the neighborhood 24-hours a day, complement the mix of approved uses within the PUD, and support the other commercial and institutional uses in the surrounding neighborhood. The additional nonresidential uses within the approved commercial building will create no additional adverse impacts.” (Ex. 4.)
26. ANC 6C submitted a July 15, 2019, letter (the “ANC 6C Report”) stating that at its regularly scheduled, duly-noticed July 10, 2019, public meeting, with a quorum of six out of six commissioners and the public present, the ANC voted to support the Application without stating any specific issues or concerns. (Ex. 12.)
27. Neither ANC 2C nor 6C testified at the public hearing.

PERSONS IN SUPPORT AND OPPOSITION

28. No persons submitted written materials or testified in support of or in opposition to the Application at the public hearing.

CONCLUSIONS OF LAW

1. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
- (a) *Results in a project superior to what would result from the matter-of-right standards;*
 - (b) *Offers a commendable number or quality of meaningful public benefits; and*

- (c) *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*
2. Pursuant to Subtitle X § 304.4, the Commission shall evaluate a proposed PUD to determine that the proposed development:
- (a) *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
- (b) *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
- (c) *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*
3. Subtitle Z § 704 authorizes the Commission to grant modifications of significance to previously approved final orders and plans provided that the hearing “shall be limited to the impact of the modification on the subject of the original application, and shall not permit the Commission to revisit its original decision.”
4. Subtitle Z § 703.5 defines a modification of significance as “a modification to a contested case order or the approved plans of greater significance than a modification of consequence.”
5. Subtitle Z § 703.6 includes “additional relief or flexibility from the zoning regulations not previously approved” as an example of a modifications of significance.
6. The Commission concludes that the Application meets the definition of a modification of significance as a request to modify the Approved First-Stage PUD to add addition zoning relief to add the proposed lodging and college/university educational uses for the Commercial Building.
7. 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 ANCs 2C and 6C.
8. The Commission concludes that the Application is consistent with the Approved First-Stage PUD, as authorized by the Original Order, as extended by Z.C. Order No. 08-34B, and as modified by Z.C. Order Nos. 08-34A, 08-34C, and 08-34E through 08-34H, because the proposed modification to allow the lodging and college/university educational uses for the Commercial Building:
- Is minor as it only relates to the use of the Commercial Building;
 - Permits uses authorized as a matter of right in the Property’s C-4 (now D-4) zone;
 - Does not change the exterior of the Approved Overall PUD; and

- Does not change the Commission’s analysis in granting the Approved First-Stage PUD under Subtitle X § 304.4 because the Application proposed no changes affecting the Approved First-Stage PUD’s:
 - Consistency with the Comprehensive Plan;
 - Mitigation or balancing any potential adverse impacts to ensure no unacceptable impacts; or
 - Proffered public benefits.

Not Inconsistent with the Comprehensive Plan

9. The Commission concludes that the proposed modifications to the use of the Commercial Building will be not inconsistent with the Comprehensive Plan, based on its review of the Application’s analysis of its consistency with the Comprehensive Plan, and for the reasons set forth therein. (Finding of Fact [“FF” 13.]

Mitigation of Impacts

10. The Commission concludes that the proposed lodging and college/university educational uses will not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities that cannot be fully mitigated or which are unacceptable given the quality of public benefits in the project, based on the analysis and determinations of the TAM and DDOT Report that the proposed lodging and college/university educational uses will not have any adverse transportation impact compared to the transportation impact of the approved office use at the Property. (FF 14, 23.) The Commission notes that the second-stage PUD application review for the Commercial Building will fully evaluate any proposed mitigation measures needed based on the final plans for the Commercial Building.

GREAT WEIGHT TO THE RECOMMENDATIONS OF OP

11. The Commission must 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 Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
12. The Commission finds persuasive OP’s analysis of the Application and its recommendation that the Commission approve the Application and concurs in that judgment.

GREAT WEIGHT TO THE WRITTEN REPORT OF THE ANC

13. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC 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 (1978) (citation omitted).)

14. The Commission finds the ANC 2C Report persuasive in its concern that the Commercial Building’s uses improve the neighborhood and its determination that the Application addresses this concern and concurs with the ANC 2C Report’s support of the Application.
15. Although the ANC 6C Report did not identify any issues or concerns to which the Commission can give great weight, the Commission notes that the ANC 6C Report supports the Application and concurs in that judgement.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for:

- A modification of significance to Z.C. Order No. 08-34, as extended by Z.C. Order No. 08-34B, and as modified by Z.C. Order Nos. 08-34A, 08-34C, and 08-34E through 08-34H, as it applies to the first-stage PUD therein approved to permit office, hotel, and/or educational uses, in addition to the approved retail use, in the Commercial Building on Lot 861 in Square 566, by revising Decision No. A.4 to read as follows (additions shown in **bold and underlined** text):

- A.4 The Overall Project shall have an approximate gross floor area of 2,226,625 square feet, or 8.74 FAR based on the Site Area. As shown on the Final First Stage PUD Plans, the Overall Project shall include approximately 1,910,386 square feet of gross floor area devoted to office uses, **of which up to 276,688 square feet of gross floor area within the Center Block may be devoted to “lodging” and/or “education, college/university” uses**, a minimum of 62,687 square feet of gross floor area devoted to retail uses, approximately 180,384 square feet of gross floor area devoted to residential uses, and approximately 73,168 square feet of gross floor area devoted to institutional uses related to the Holy Rosary Church and the Jewish Historical Society.


All other conditions in Z.C. Order No. 08-34, as extended by Z.C. Order No. 08-34B, and as modified by Z.C. Order Nos. 08-34A, 08-34C, and 08-34E through 08-34H, remain in effect and unchanged.

VOTE (October 24, 2019): 5-0-0 (Robert E. Miller, Michael G. Turnbull, Anthony J. Hood, Peter A. Shapiro, and Peter G. May to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order No. 08-34K shall become final and effective upon publication in the *D.C. Register*; that is, on October 30, 2020.

BY 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

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.