

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-08C
Z.C. Case No. 11-08C
MCREF Embassy, LLC
(PUD Modification of Consequence @ Square 2578)
March 12, 2018

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on March 12, 2018. At that meeting, the Commission reviewed and approved the request of MCREF Embassy, LLC (“Applicant”) for a modification of consequence of Condition Nos. B.3 and B.4 of the planned unit development (“PUD”) approved by Z.C. Order No. 11-08C. The Applicant requested that both conditions be modified to reflect the current needs of the respective recipient organizations.

At the public meeting, the Commission determined that this request was properly considered a modification of consequence. It further determined that all relevant parties had received notice of the application and the record was complete such that the Commission was able to make a determination on this request at the public meeting. The modification of consequence was reviewed pursuant to § 703 of the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

FINDINGS OF FACT

BACKGROUND INFORMATION

1. Z.C. Order No. 11-08 approved a residential building at 2700 16th Street, N.W., at the site of the former Italian Embassy. Construction pursuant to the approval is well underway, with the first certificate of occupancy for residential use expected in 2018.
2. As terms of the issuance of a certificate of occupancy, the Applicant must demonstrate compliance with certain conditions. Two such conditions are the subject of the modification application.
3. On February 15, 2018, the Applicant submitted an application to the Commission seeking approval pursuant to § 703 to modify Conditions B.3 and B.4 in Z.C. Order No. 11-08 (“Order”). (Exhibit [“Ex.”] 1, 2-2E.)
4. Condition B.3 in the Order required the Applicant to renovate the commercial kitchen at the Festival Center, including demolition of and moving the men’s restroom and

- demolition and building of the new kitchen space and installation of new kitchen equipment. (Ex. 2B.)
5. Condition B.4 required the Applicant to establish a tree fence buy-in program and to contribute \$50,000 to the program. Once the program was established, the Applicant was responsible for selling and installing up to 625 tree fences, which would be sold at cost. (Ex. 2B.)
 6. The Applicant requested to modify both conditions to better accommodate the current needs of both organizations. Both the Festival Center and the Reed-Cooke Neighborhood Association (“RCNA”) submitted documents in support of the requested modifications. (Ex. 2C, 2E.)
 7. The application included a letter and an agreement with the Festival Center dated February 1, 2018, stating that instead of renovating the kitchen, the Center would prefer a contribution from the Applicant in the amount of \$250,000 to be put toward major building maintenance such as improvements on the HVAC system, improving accessibility, security, and energy efficiency, as well as improving the kitchen. (Ex. 2C.)
 8. The application also included an agreement with RCNA that stated RCNA desired to expand the beautification program previously approved by the Commission beyond tree fences and to include other public space improvements. The agreement further provided for a contribution from the Applicant of \$120,000 to effectuate the beautification program. (Ex. 2E.)
 9. ANC 1C submitted a resolution unanimously in support of the modification, noting that the developer engaged in extensive dialogue with both the Festival Center and RCNA and further noting that modifying Conditions B.3 and B.4 is appropriate given that the conditions are being modified based on input from the affected organizations. (Ex. 4.) ANC 1C expressed no issues or concerns.
 10. The Office of Planning (“OP”) submitted a report dated March 8, 2018, noting that it did not oppose the changes to the conditions as a modification of consequence. OP noted that while the proposed modifications could be considered a modification of significance, in this case, OP did not believe that the modifications required a hearing as all parties to the record, including the ANC, supported the proposed revisions to the order. Further, the request was straightforward, did not present a factual issue that would require a public hearing to resolve and did not change the material facts upon which the case was decided. (Ex. 3.)
 11. In satisfaction of § 703.13 of Subtitle Z, the Applicant provided a Certificate of Service which noted that all parties to Z.C. Case No. 11-08 were served with this application.

CONCLUSIONS OF LAW

This application is properly before the Commission as a modification of consequence. While OP noted that the proposed modifications could be considered a modification of significance, the Commission, pursuant to 11-Z DCMR § 703.1, in the interest of efficiency, is authorized to make “minor modifications” or “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) One example of a modification of significance given by § 703.6 is a “change to proffered public benefits and amenities,” which is what is requested here. The Commission, however, considers these standards to be flexible, with the principal distinction between modifications of significance and consequence being whether the Commission believes it would be helpful to have a hearing. In this instance, the request is straightforward and supported by all parties to the original case as well as the recipients of the benefits approved in the original case. As such, the Commission gives great weight to OP’s conclusion that this application is properly before the Commission as a modification of consequence. The Commission is persuaded by the evidence in the record, including the agreements from the Festival Center and RCNA, that the proposed modifications are in the best interest of the community.

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 of the affected ANC’s. As is reflected in the Findings of Fact, ANC 1C had no issues or concerns.

The Commission is required give great weight to the recommendations of OP (See D.C. Official Code § 6-623.04 (2012 Repl.)). The Commission concurs with OP’s recommendation to approve this modification of consequence application. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

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 the modification of Conditions No. B.3 and B.4 in Z.C. Order No. 11-08, as a modification of consequence. The conditions in Z.C. Order No. 11-08 remain unchanged except as follows. The following conditions replace conditions No. B.3 and B.4 of Z.C. Order No. 11-08:

- B.3. Prior to issuance of a certificate of occupancy, for the project, the Applicant shall provide \$250,000 to the Festival Center to be put toward major constructional maintenance, including but not limited to, repairs to the HVAC, roof and elevators, performing accessibility and energy efficiency improvements or implementing electrical, security system and kitchen upgrades. Prior to the issuance of a certificate of occupancy, the Applicant shall submit evidence to the Zoning Administrator in the form of a letter, signed by the Festival Center, confirming that the funds have been provided to the Festival Center and that the Festival Center is using them for the intended use.

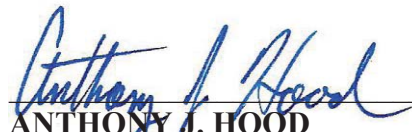
- B.4 Prior to the issuance of a certificate of occupancy for the project, the Applicant shall contribute \$120,000 to the Reed-Cooke Neighborhood Association to be used in its Block Beautification program. The funds will be used for maintenance of existing tree boxes, landscaping and other neighborhood projects that beautify the public spaces in the Reed-Cooke neighborhood. Prior to issuance of a certificate of occupancy, the Applicant shall submit evidence to the Zoning Administrator in the form of a letter, signed by the Reed-Cooke Neighborhood Association, confirming that the funds have been allocated for the Reed-Cooke Neighborhood Association as set forth in the Amendment and Restatement of Agreement and that the Reed-Cooke Neighborhood Association is using the funds for the intended use.

On March 12, 2018, upon the motion 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 **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; 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 August 3, 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