

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-14A

Z.C. Case No. 14-14A

Jamal's CDC, LLC

(Modification of Consequence of Consolidated PUD and Related Map Amendment

@ Lot 47 in Square 833 [501 H Street, N.E.]

July 29, 2019

Pursuant to notice, at its May 13, and July 29, 2019, public meetings, the Zoning Commission for the District of Columbia (the "Commission") considered the application (the "Application") of Jamal's CDC LLC (the "Applicant") for a Modification of Consequence to Condition Nos. A.1. and A.2. and the approved plans of Z.C. Order No. 14-14 (the "Original Order"), which approved a Consolidated Planned Unit Development (a "PUD") for Lot 47 in Square 833 with a street address of 501 H Street, N.E. (the "Property"). The Commission reviewed the Application pursuant to the Commission's Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations (Title 11 of the DCMR to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PRIOR APPROVALS

1. Pursuant to the Original Order, the Commission approved a Consolidated PUD approval for Lot 47 in Square 833 (the "PUD Site"), together with a Zoning Map amendment from to the HS-H/C-2-B (now the NC-9) zone (the "Approved PUD"), to construct a six-story, mixed-use building (the "Building") with approximately 47,971 square feet, including 15,411 square feet of retail uses on the cellar, first and second levels, and 32,560 square feet of residential uses on the cellar, and third through sixth levels. The Building was completed in 2017 and 100% of the residential units and 50% of the approved retail space are currently leased.

PARTIES AND NOTICE

2. The only party to Z.C. Case No. 14-14 other than the Applicant was Advisory Neighborhood Commission ("ANC") 6C, the "affected" ANC pursuant to Subtitle Z § 101.8.
3. The Applicant served the Application on April 25, 2019, on ANC 6C and the Office of Planning ("OP"), as attested by the Certificate of Service submitted with the Application (Ex. 1).

II. THE APPLICATION

4. On April 25, 2019, the Applicant filed the Application (Exhibit ["Ex."] 1D) requesting a Modification of Consequence to modify:
 - Condition No. A.1. to revise the plans approved by the Original Order (the "Approved Plans") to add four punched glass windows on the second level of Building's South and East facades in place of the false windows imprinted within the stone façade materials in order to provide natural light into the Building's interior; and
 - Condition A.2. to permit office uses on the second level and to clarify that residential uses are permitted on the third level as shown on the Approved Plans.
5. The Application stated that it had agreed to provide permanent frosting on all of the proposed new windows, up to a minimum height of six feet as measured from the bottom of the window glass to address concerns raised by the owner of the residential property located across the public alley to the South of the Property (Ex. 1D).
6. On July 25, 2019, the Applicant responded to the ANC Report, as defined below, by submitting:
 - The updated Memorandum of Understanding (the "MOU") executed by the Applicant and ANC 6C (Ex. 8A); and
 - The updated Residential Parking Permit ("RPP") Covenant executed by the Applicant and in the form reviewed and accepted by the ANC (Ex. 8B).

III. RESPONSES TO THE APPLICATION

OP REPORT

7. OP submitted a May 3, 2019, report (Ex. 3, the "OP Report") recommending approval of the Application because it would not increase the permitted floor area ratio ("FAR") or the intensity of use of the building, but it proposed language to modify Condition A.2 of the Original Order to authorize the change in use requested by the Application.

ANC REPORTS

8. ANC 6C submitted a written report (Ex. 7, the "ANC Report") stating that at its duly noticed and regularly scheduled meeting on July 10, 2019, at which a quorum was present, the ANC voted:
 - To express two concerns:
 - Residential tenant misuse of curbside visitor parking passes in the nearby RPP blocks; and
 - Non-compliance with the truck-size and use restrictions on the loading dock; and
 - To support the Application on the condition that the Applicant address these issues by:
 - Executing a revised MOU; and
 - Revising portions of the RPP covenant recorded as part of the Approved PUD.

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, is authorized 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 6C, through timely service on April 25, 2019.
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 final conditions 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 6C, 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 July 29, 2019 public meeting.
7. The Commission concludes that the Application’s proposed modifications are consistent with the Approved PUD because:
 - Office uses are permitted as a matter of right in the zone and will not increase the FAR or intensity of use of the PUD;
 - Office use will provide additional pedestrian traffic for the building and generate increased use of the retail uses; and
 - Adding the proposed punched glass windows will provide natural light to the new office space on the second level.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

8. Pursuant to § 13(d) 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 (2001)) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
9. The Commission finds OP’s recommendation to approve the Application persuasive and concurs in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANCS

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.); see 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).)
11. The Commission finds the ANC Report’s concerns about parking and loading issues persuasive and concludes that the Applicant’s supplemental submissions of the revised MOU and RPP Covenant addressed these concerns. The Commission notes the ANC Report’s support for 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 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 Condition Nos. A.1 and A.2 of Z.C. Order No. 14-14 and the plans approved thereby, to read as follows: (deletions in ~~bold and strikethrough~~; additions in **bold and underlined**):

A. PROJECT DEVELOPMENT


1. The PUD shall be developed in accordance with the architectural plans and elevations (the "Plans"), dated May 14, 2015 (Exhibit 33) and June 4, 2015 (Exhibit 40A), **as modified by the plan dated April 25, 2019 in the record of Z.C. Case No. 14-14A at Exhibit 1D,** and as modified by the guidelines, conditions, and standards of this Order. ~~The Plans show an option, shown as option~~ **Option 2** on page 22 of Exhibit 33 **in the record of Z.C. Case No. 14-14,** to construct portions of the south and east elevations with a cementitious material. ~~The Applicant withdrew this request~~ **was withdrawn by the Applicant** at the hearing, and ~~it~~ is not approved by this Order.
2. In accordance with the Plans, the PUD shall be a six-story, mixed-use, multiple dwelling building with approximately 47,971 square feet of gross floor area and 4.89 FAR. Approximately 15,411 square feet of gross floor area (1.57 FAR) and approximately 8,538 square feet of cellar floor area shall be devoted to retail use on the cellar, first, and second levels, **of which approximately 9,427 square feet of gross floor area may be devoted to office use on the second level.** Approximately 32,560 square feet of gross floor area (3.32 FAR) and approximately 1,199 square feet of cellar floor area shall be devoted to residential use in the cellar, **third,** fourth, fifth, and sixth levels, comprised of 28 residential

units (plus or minus three units). The building shall be constructed to a maximum height of 77'-5" to the top of the roof slab, and 83'- 5" to the top of the six-foot parapet.

All other conditions of Z.C. Order No. 14-14 remain unchanged and in effect.

VOTE (July 29, 2019): **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order No. 14-14A shall become final and effective upon publication in the *DC Register*; that is, on September 4, 2020.



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.