

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-06D
Z.C. Case No. 16-06D
JEMAL/PTM LAZRIV WATER II
(Design Review Modification of Consequence
@ Square 666, Lot 15[1900 Half Street, S.W.]
April 27, 2020

Pursuant to notice, at its April 27, 2020 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of JEMAL/PTM LAZRIV WATER II (the “Applicant”) for a modification of consequence to a design review case originally approved in Z.C. Order No. 16-06 (the “Original Order”), as modified by Z.C. Order Nos. 16-06A, 16-06B, and 16-06C, for Lot 15 in Square 666, with a street address of 1900 Half Street, S.W. (the “Property”) to add:

- Education uses to the uses authorized by the Original Order; and
- 2,400 square feet of gross floor area (“GFA”) and 0.47% to the floor area ratio (“FAR”) to that approved by the Original Order.

The Application also included a request for a waiver from Subtitle Z §§ 703.5 and 703.6 pursuant to Subtitle Z § 101.9, in order to substitute the Eagle Academy Public Charter School (“Eagle Academy”) in place of a retail use approved by the Original Order.

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. Pursuant to the Original Order, the Commission granted design review approval to adaptively reuse the existing office building on the Property into a mixed-use project comprised of residential and retail uses (the “Approved Project”).
2. Pursuant to Z.C. Order No. 16-06A, effective May 11, 2018, the Commission approved a modification of significance to the Approved Project that included special exception relief

to modify the roof plan, reduce the number of residential units, reduce the number of parking spaces, reallocate interior space between uses, and modify the building's façade. Z.C. Order No. 16-06A did not modify the public space improvements that are the subject of this Application. (Exhibit ["Ex."] 2B.)

3. Pursuant to Z.C. Order No. 16-06B, effective December 21, 2018, the Commission approved a modification of consequence to the Approved Project to modify architectural details resulting in approximately 502,395 square feet of total gross floor area (4.53 FAR), with approximately 453 residential dwelling units and 280 parking spaces. Z.C. Order No. 16-06B also did not modify the public space improvements that are the subject of this Application. (Ex. 2C.)
4. Pursuant to Z.C. Order No. 16-06C, the Commission approved a modification of consequence to the Approved Project to permit changes to Condition Nos. 2 and 4 of the Original Order to substitute the public space plans approved by the Original Order with a new public space plan approved by the District Department of Transportation ("DDOT") in regards to the sidewalk on Half Street and the cycle track on T Street.

Parties

5. The only party to Z.C Case Nos. 16-06, 16-06A, 16-06B, and the present case, other than the Applicant, was Advisory Neighborhood Commission ("ANC") 6D, the "affected" ANC pursuant to Subtitle Z § 101.8.

The Application

6. On March 3, 2020, the Applicant served the Application on ANC 6D and the Office of Planning ("OP"), as attested by the Certificate of Service submitted with the Application. (Ex. 2.)
7. Pursuant to Subtitle Z § 101.9, the Applicant requested that the Commission waive the classification of a change of use as a modification of significance in Subtitle Z §§ 703.5 and 703.6 in order to consider the Application as a modification of consequence. The Application asserted that it met the requirements for a waiver as follows:
 - Good cause - Eagle Academy's narrow timeframe to obtain zoning approval as it recently lost its current lease in the neighborhood due to the redevelopment of its current site and needs to open in August 2020;
 - No prejudice to any party – the only party, ANC 6D, voted to support the Application subject to a condition that the Applicant accepted; and
 - Not prohibited by law – the Zoning Regulations do not bar the Commission waiving Subtitle Z §§ 703.5 and 703.6. (Ex. 2, 9.)
8. The Applicant submitted a transportation analysis (the "Traffic Study") that analyzed the impacts of the proposed education use on the Approved Project and concluded that: (Ex. 7.)
 - The proposed education use will not have a detrimental impact on the surrounding roadway network;

- None of the study area intersections were found to have unacceptable delays and no additional mitigations are warranted;
- The proposed education use is expected to generate a manageable number of trips which can be accommodated by the proposed parking garage for staff and a pick-up/drop-off lane on Water Street, S.W., for parents;
- The proposed pick-up/drop-off lane on Water Street, S.W., will accommodate students who are driven to and from school within 20 minutes before and after the arrival and dismissal periods; and
- The Applicant proposed a rigorous Transportation Demand Management plan (the “TDM”) to incentivize Eagle Academy staff, faculty, and parents of students to further reduce the demand of single-occupancy vehicles on-site. (Ex. 7 at 4-5.) The plan includes carpooling matching among parents and public transportation benefits for staff/faculty.

9. The Applicant agreed to adopt DDOT’s conditions in its request for expedited review filed on April 15, 2020. (Ex. 9.)

Responses to the Application

OP

10. OP submitted a report dated March 20, 2020 (the “OP Report”), stating that it:
- Concurred with the Applicant that the Application is typically a modification of significance, but did not object to the Applicant’s request for a waiver to allow the Application to be processed as a modification of consequence;
 - Would recommend that the Application be set down for a public hearing if the Commission denied the waiver and processed the Application as a modification of significance;
 - Noted that the requested education uses are permitted as a matter of right in the CG-5 zone pursuant to Subtitle K § 507.2;
 - Noted that the proposed increase in GFA and FAR was small and less than what existed when the building was originally constructed; and
 - Concluded that no additional zoning relief was required. (Ex. 4.)

DDOT

11. DDOT submitted a March 20, 2020 email (the “DDOT Email”), stating that it had no objection to the Application, subject to two conditions, because the proposed education use would not result in significant impacts to the surrounding transportation network, though it did expect that there would be a moderate increase in vehicle trips on intersections around Buzzard Point. (Ex. 6.) The DDOT Email’s two transportation-related conditions were:
- That the Applicant implement the TDM Plan outlined in its Traffic Study to encourage carpooling and other non-single occupancy vehicle modes of travel; and
 - That the Applicant implement the school pick-up/drop-off plan outlined in the Traffic Study. The Applicant should coordinate with DDOT’s Safe Routes to School Program in the future if the plan needs to be changed.

ANC 6D

12. ANC 6D submitted two responses to the Application as follows:¹
- On November 19, 2019, a report stating that the ANC voted to support the Application at its duly noticed November 18, 2019, public meeting at which a quorum was present; and (Ex. 2G.)
 - On April 14, 2020, a report (the “ANC Report”) stating that the ANC voted to reiterate its support for the Application at its duly noticed April 13, 2020, public meeting at which a quorum was present, with its support subject to the condition that Eagle Academy’s lease allow space that is not used for the school to be returned to retail. (Ex. 8.) The ANC Report’s condition addressed the ANC’s concern that if Eagle Academy did not grow its student body as anticipated that the lease would prevent that unused space from being returned to retail use as needed by the neighborhood and as permitted under the Original Order.

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. Subtitle Z § 703.6 includes “a change of use” as an example of a modification of significance, which Subtitle Z § 703.5 requires be considered after a public hearing.
5. Subtitle Z § 101.9 authorizes the Commission, “for good cause shown, [to] waive any of the provisions of this subtitle if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.”
6. The Commission concludes that there is good cause to grant the Application’s requested waiver from Subtitle Z §§ 703.5 and 703.6 because the requested education uses are allowed as a matter of right in the CG-5 zone and the District’s current state of emergency caused by the COVID-19 pandemic² has suspended the Commission’s public hearings and slowed the permitting processes required to allow Eagle Academy to open by August 2020.

¹ ANC 6D also filed a March 17, 2020, request to postpone consideration of the case at the public meeting scheduled for April 13, 2020 to the meeting to April 27, 2020, to allow the ANC to consider the Application at its April 13, 2020, scheduled public meeting. (Ex. 5.)

² The Mayor’s Office declared a state of emergency for the District in response to the COVID-19 Pandemic on March 11, 2020. (Mayor’s Order 2020-045.)

The Commission notes that the circumstances surrounding the Application's waiver request are unique and justify overriding the Commission's reluctance to consider a change of use as a modification of consequence – specifically, Eagle Academy's efforts to find a suitable site in the neighborhood at short notice combined with the delayed approval and permitting process caused by the District's state of emergency in order to meet its opening deadline. The Commission concludes that based on the ANC Report's support of the Application, ANC 6D, the only party to the case other than the Applicant, would not be prejudiced by the granting of the waiver, which is not otherwise prohibited by the Zoning Regulations.

7. The Commission concludes that with the waiver it can consider the Application as a modification of consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify the conditions and plans approved by the Original Order, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
8. 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.
9. The Commission concludes that the Application is consistent with the Approved Project as approved by the Original Order, and as modified by Z.C. Order Nos. 16-06A, 16-06B, and 16-06C, because:
 - The education uses proposed to be added to the approved uses are allowed as matter of right in the CG-5 zone; and
 - DDOT, and the Traffic Study, determined that the education use would not cause significant adverse impacts to the surrounding transportation network, and the Applicant had accepted DDOT's two conditions designed to minimize potential adverse impacts.

“Great Weight” to the Recommendations of OP

10. The Board 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).)
11. The Commission notes OP's support for considering the Application as a modification of consequence and finds persuasive OP's analysis of the Application, particularly that education uses are permitted as a matter of right in the CG-5 zone and that the building will provide adequate facilities for the proposed education use.

“Great Weight” to the Written Report of the ANC

12. 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).)

13. The Commission finds persuasive the ANC Report’s concern that if Eagle Academy is unable to grow as it anticipates and fill all of the space, the unused space would be unable to be used for the retail uses approved by the Original Order and needed by the neighborhood. The Commission therefore specifically authorizes the Applicant, if that situation occurs, to return space not used for educational uses to the uses authorized under the Original Order without requiring an additional approval from the Commission (provided that any resulting design changes would not require Commission approval). While the Commission does not have the authority to adopt the ANC’s condition as part of this order, the Commission notes that the ANC did not specify that the condition had to be part of the Commission’s order and that the Applicant has independently agreed to the ANC’s condition. The Commission otherwise finds the ANC Report’s support for the Application persuasive and concurs in the ANC’s judgement to approve the Application.

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 Applicant’s request for a modification of consequence to Z.C. Order No. 16-06, as modified by Z.C. Order Nos. 16-06A, 16-06B, and 16-06C, the conditions of which all remain unchanged and in effect except that Condition Nos. 2 and 3 are hereby revised to read as follows (deletions shown in **bold** and ~~striketrough~~ text; additions in **bold** and underlined text):

2. The project shall be built in accordance with the architectural drawings dated June 20, 2016 (Ex. 29 of Z.C. Case No. 16-06), as modified by:
 - The DDOT-Approved Plan dated December 3, 2018 (Ex. 2F of Z.C. Case No. 16-06C), incorporating any changes required by the public space permit approving the temporary sidewalk improvements required by Condition No. 4(a) of Z.C. Order No. 16-06 as amended by Z.C. Order No. 16-06C;
 - **The architectural drawings dated August 6, 2018 (Ex. 2F of Z.C. Case No. 16-06D)**; and ~~by~~
 - The guidelines, conditions, and standards below.

3.c. The Applicant shall incorporate the following TDM measures for the proposed Eagle Academy Charter School (the “School”):

- i. Student TDM Elements:**
 - a) The School shall offer a parent listserv which will allow parents to find carpool matches;**

- b) The School shall organize carpooling and publicly recognize at annual ceremony any parent who regularly drives two or more students to school;
- c) The School shall offer DC One Cards to all students to encourage the use of public transportation;
- d) The School shall require all drop-off and pick-up activities to be within the designated area on Water Street, S.W; and
- e) The School shall coordinate bike safety/education courses for students;

ii. Faculty/Staff TDM Elements:

- a) The School shall offer a transit benefit program in the form of SmarTrip cards to faculty and staff to encourage the use of public transportation;
- b) The School shall encourage carpooling and prioritize providing parking for any faculty or staff who regularly drives two additional faculty or staff members to school;
- c) All faculty and staff who drive to school shall be instructed to park within the parking garage in the designated spaces; and
- d) The School shall offer secure long-term and short-term bicycle parking which meets 2016 Zoning Regulations. Under these requirements, three long-term and 10 short-term spaces are required and will be provided. Short-term spaces shall be provided in the form of a bicycle rack;


iii. School-Wide TDM Elements:

- a) The School shall continue to work with the neighborhood through periodic public meetings to ensure any traffic concerns can be addressed in a timely manner;
- b) The School shall assign a staff member to serve as Transportation Management Coordinator who shall be responsible for oversight of the TDM plan, adherence to driving and parking regulations, and encourage and facilitate car-pooling;
- c) The School shall implement policies for deliveries to the campus to minimize the impact of this traffic on the neighborhood;
- d) The School shall install outdoor bicycle parking racks to promote additional bicycle activity on campus;
- e) The School shall participate in the Safe Routes to School Program; and
- f) Per the previous zoning approval for 1900 Half Street, the Applicant is finalizing an agreement to install a Capital Bikeshare station near the site; and

iv. Pick-Up/Drop-Off Plan: The Applicant shall implement the school pick-up/drop-off plan outlined in the Applicant's Traffic Study (Ex. 7, Fig. 2 and 3) and coordinate with DDOT's Safe Routes to School Program in the future if the plan needs to be changed.

VOTE (Apr. 27, 2020): 5-0-0 (Robert E. Miller, Peter A. Shapiro, Anthony J. Hood, Peter G. May, and Michael G. Turnbull to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 16-06D shall become final and effective upon publication in the *D.C. Register*; that is, on May 15, 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.