

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 17-05C
Z.C. Case No. 17-05C
2100 2nd Street SW LLC
Modification of Consequence of Design Review
@ 2121 First Street SW (Lot 10 in Square 613)
(Date Approved), 2020

Pursuant to notice, at its [REDACTED], 2020 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of 2100 2nd Street SW LLC (the “Applicant”) for a Modification of Consequence to the conditions and approved plans of the RiverPoint project originally approved by Z.C. Order No. 17-05 (the “Original Order”), as modified by Z.C. Order No. 17-05A, for Lot 10 in Square 613, with a street address of 2121 First Street SW (the “Property”). 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 the Applicant Design Review approval for the conversion of the former headquarters of the United States Coast Guard into a mixed-used residential building with ground floor retail (the “Approved Project”).
2. In Z.C. Order No. 17-05A the Commission approved a modification of the Approved Project to modify the originally approved plans.¹

Parties

3. The only party to the Z.C Case No. 17-05 other than the Applicant was Advisory Neighborhood Commission (“ANC”) 6D, the “affected” ANC pursuant to Subtitle Z § 101.8.

The Application

4. On April 24, 2020, the Applicant filed the Application requesting a Modification of Consequence to authorize modifications to the plans/conditions approved by Z.C. Order

¹ There is a pending Modification of Significance case for the Property to add a temporary lodging use, which, at this time, is still pending before the Commission as Z.C. Case No. 17-05B.

No. 17-05 to introduce DC Central Kitchen (“DCCK”) as a service use on the ground floor of the Approved Project and to add approximately 15,000 square feet of partial second-floor space for DCCK’s use. DCCK is a nonprofit and social enterprise that combats hunger and poverty through job training and job creation for individuals facing high barriers to employment, while also providing food to DC Schools and others. DCCK’s use is considered service use; however, the ground floor of the Approved Project was originally approved for retail use, thus necessitating relief from the original approval. Additionally, the Applicant is adding approximately 15,000 square feet as a partial second floor for DCCK, resulting in an increase in 0.01 FAR (to a total FAR of 4.46), requiring the Commission’s discretionary approval pursuant to 11-K DCMR § 505.4(c).

5. The Applicant provided evidence that on April 24, 2020 it served the Application on ANC 6D, and the Office of Planning (“OP”) as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] [REDACTED].)
6. OP submitted a report dated [REDACTED], 2020 stating no objection to the Application being considered as a Modification of Consequence and recommending approval of the Application (the “OP Report”). (Ex. [REDACTED].) The OP Report noted that [*any additional OP comments ...*]
7. ANC 6D submitted a written report dated April 14, 2020, stating that at its duly noticed public meeting on April 13, 2020, at which a quorum was present, ANC 6D voted to support the Application (the “ANC Report”). (Ex. [REDACTED].) The ANC Report noted the DCCK’s use would complement the Approved Project’s uses and DCCK would provide “a training program for deeply disadvantaged populations and integrating them into the community” which “directly serves [the ANC’s] interest in maintaining social diversity in our own community.”

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. 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.

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 the project uses and architectural elements approved by the Original Order, as modified by Z.C. Order No. 17-05A, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2). The Commission notes the addition of a service use is a change in use, which in some circumstances constitutes a Modification of Significance; however, the impacts of the DCK use are not appreciably different than the impacts of the approved retail use. Accordingly, the Commission still concludes that the Application qualifies as a Modification of Consequence.
6. The Commission concludes that the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties to the original proceeding has been met because ANC 6D, the only party other than the Applicant to the Approved Project, filed a response to the Application on [REDACTED], and therefore the Commission could consider the merits of the Application at its [REDACTED], 2020 public meeting.
7. The Commission finds that the Application is consistent with the Approved Project, as authorized by the Original Order, as modified by Z.C. Order No. 17-05A, because DCK's service use is analogous to the retail use originally approved, the additional square footage and increase in FAR does not substantially change the originally-approved plans, and the Modification continues to be consistent with the objectives of the Capitol Gateway zones and not inconsistent with the Comprehensive Plan.
8. The Commission finds that the increase in FAR from 4.45 to 4.46, is appropriate under 11-K DCMR § 505.4(c) because the Approved Project contains more than 2.0 FAR of residential use and the increase in FAR does not affect the external configuration of the Approved Project. Moreover, the additional FAR allows for the introduction of a use that diversifies the uses in the Project and provides an important service for the community.

“Great Weight” to the Recommendations of OP

9. 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)
10. The Commission notes OP’s lack of objection to the Application being considered as a Modification of Consequence and finds persuasive OP’s recommendation that the Commission approve the Application and therefore concurs in that judgment.

“Great Weight” to the Written Report of the ANC

11. 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)) and Subtitle Z § 406.2, the Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC. To satisfy this great weight requirement, District agencies 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

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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).

12. The Commission finds the ANC Report’s support for the Application being considered as a Modification of Consequence persuasive and concurs with the ANC’s recommendation that the Commission approve the Application because the DCK use will complement the RiverPoint development.

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 modify Z.C. Order No. 17-05, as modified by Z.C. Order No. 17-05A, to modify the plans approved by Z.C. and add service use to the Project, subject to the following conditions and provisions:

The conditions in Z.C. Order No. 17-05/17-05A, remain unchanged and in effect, except that Condition Nos. 1 and 5 as stated or incorporated in these orders, is hereby revised to read as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions in **bold** and **underlined** text):

1. The Project shall be built in accordance with the plans, including flood proofing plans, and elevations dated May 16, 2017, and marked as Exhibit 16A of the record of Z.C. Case No. 17-05, as modified by the drawings submitted as Exhibits 26A, 30A, and 34A of the record of Z.C. Case No. 17-05, and as modified by the guidelines, conditions, and standards contained in the Z.C. Order No. 17-05, as amended by the plans submitted on August 10, 2018, marked as Exhibit 1C of the record of Z.C. Case No. 17-05A, **as further amended by the plans submitted on April 24, 2020, marked as Exhibit [] of the record of Z.C. Case No. 17-05C.**
5. Loading Demand Management Measures. Prior to the issuance of the first Certificate of Occupancy for the Project, the Applicant shall demonstrate that it has or will adhere to the following Loading Mitigation measures as set forth in the DDOT report:
 - a. A loading dock manager will be designated by the building management (duties may be part of other duties assigned to the individual). He or she will coordinate with vendors and tenants to schedule deliveries and will be on duty from 9:00 a.m. to 5:00 p.m. and will coordinate with the community and neighbors to resolve any conflicts should they arrive;
 - b. **DC Central Kitchen (DCK) will designate a loading coordinator (duties may be part of other duties assigned to the individual) who will coordinate with the Dock Manager regarding the delivery schedule for all DCK deliveries.**

- c. All tenants, **including DCCK**, will be required to schedule deliveries that utilize the loading dock (any loading operation conducted using a truck 20 feet in length or larger) and all loading activities are required to occur at the loading docks;
- d. The dock manager will schedule deliveries such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as not to compromise safety or impede street or intersection function;
- e. The dock manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic along 2nd Street and 1st Street except during those times when a truck is actively entering or exiting a loading berth;
- f. Trucks larger than WB-40 will not be permitted in any loading berths except for the northern most loading berth on 2nd Street;
- g. Non-certified flaggers will be provided to assist with inbound and outbound truck maneuvers in each of the loading docks to ensure vehicular, bike, and pedestrian traffic is not impeded;
- h. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, § 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route Map; and
- i. The dock manager will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading dock as well as notifying all drivers of any access or egress restrictions. The dock manager will also distribute materials as DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with idling laws. The dock manager will also post these documents and notices in a prominent location within the service area.

VOTE (_____, 2020): **_-_-_** ([ZCM making motion], [ZCM seconding motion], 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, this Order No. 17-05C shall become final and effective upon publication in the *DC Register*; that is, on _____, 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.