

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 01-01A
Z.C. Case No. 01-01A
BP/CRF 901 New York Avenue, LLC
(Modification of Consequence of Consolidated PUD @ Square 372, Lot 34)
July 30, 2018

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on July 30, 2018. At that meeting, the Commission approved the application of BP/CRF 901 New York Avenue, LLC (“Applicant”) for a modification of consequence of the consolidated PUD application approved by Z.C. Order No. 01-01MM/99-6M/88-16C (“Approved PUD”). The property (Lot 34 in Square 372) that is the subject of this application is bounded by New York Avenue, N.W. to the south, 10th Street, N.W. to the west, K Street, N.W. to the north, and 9th Street, N.W. to the east (“Property”). The modification request was made 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.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. The Commission first approved the Approved PUD in 1989 by Z.C. Order No. 629 for Z.C. Case No. 88-16C, and extensions were granted by Z.C. Order Nos. 629A through 629F. The Approved PUD was subsequently modified and expanded and a related Zoning Map amendment was added in 2000 by Z.C. Order No. 920 for Z.C. Case No. 99-6M/88-16C, which approved a rezoning from the C-3-C, HR/C-3-C, and DD/C-3-C Zone Districts to the C-4 Zone District and the development of the existing office building with a density of 10.0 floor area ratio (“FAR”), a height of 130 feet, and approximately 532,505 square feet of gross floor area. The Commission subsequently approved a minor modification to the Approved PUD in 2001 by Z.C. Order No. 920-A for Z.C. Case No. 01-01MM/99-6M/88-16C to permit the owner to utilize the combined lot provisions of the Zoning Regulations to meet the applicable housing requirement through a contribution to the Housing Production Trust Fund. No other modifications or other actions had been requested for the Approved PUD since Z.C. Order No. 920-A prior to the modification requested in the instant application.

2. The Commission, at its July 30, 2018 public meeting, determined that the application qualified as a modification of consequence within the meaning of Subtitle Z § 703 of the Zoning Regulations of 2016 (Title 11 DCMR), and that no public hearing was necessary pursuant to Subtitle Z § 703.1. Ordinarily, the Commission would then be required by Subtitle Z § 703.18 (c)(2) to “[e]stablish a timeframe for the parties in the original proceeding to file responses in opposition to or in support of the request and for the applicant to respond thereto; and schedule the request for deliberations.” However, the record already included a report by Advisory Neighborhood Commission (“ANC”) 2C, which was the only other party to the original proceeding, and the Commission therefore granted the Applicant’s request to waive that rule and proceed with deliberations on the merits.

CURRENT APPLICATION

3. The modification proposed by this application revises the project’s building entrances located on New York Avenue and K Street, N.W., as shown in the architectural plans at Exhibit (“Ex.”) 2C. The proposed modifications were designed to provide more open, welcoming entrances for those accessing the Property and will improve the building’s interaction with the public realm, thereby enhancing the pedestrian environment. The modification also includes improvements in the lighting for the entrances. (Ex. 2, 2C.)
4. For the New York Avenue entrance, the Applicant proposes to raise the existing grill of the covered entrance from the current clearance of approximately 16 feet, five inches to a new clearance of approximately 27 feet, nine inches at the same location in order to create a more open entrance and increase the amount of natural light at such location, which will also increase visibility and activate the adjacent public space. The modified New York Avenue entrance will also include a hanging sculpture inspired by the imagery of cherry blossoms. (Ex. 2, 2C.)
5. Like the New York Avenue entrance, the Applicant proposes to modify the building entrance on K Street, N.W. to raise the existing grill above the doors to provide a more open design and allow a greater amount of natural light at the entrance. The existing grill and sign along K Street, N.W. has a clearance of approximately 10 feet, 10 inches, and the proposed grill and sign will have a clearance of approximately 23 feet, two inches at the same location. (Ex. 2, 2C.)
6. In addition to the requested modification to the project’s building entrance, the Applicant also requested that, as part of the application, the Commission update Condition No. 8 of Z.C. Order No. 920 in order to correct an apparent error to clarify that the Applicant may install awnings along the building façade that are of any color or pattern. Condition No. 8, as published, states that “[a]wning surfaces may **not** be of any color or pattern” (emphasis added). However, based on the record for Z.C. Case No. 99-6M, specifically, discussions by the Commission and Office of Planning (“OP”) staff at the Commission’s January 31,

2000 public hearing, and OP's report in that case, it is clear that the Commission's intent was to permit awnings of any color or pattern. (Ex. 2, 2D.)

7. In satisfaction of Subtitle Z § 703.13, the Applicant provided a Certificate of Service which noted that ANC 2C were served with the application. (Ex. 2.)
8. OP submitted a report on June 28, 2018, recommending that the Commission approve the application as a modification of consequence, including the proposed design revisions and the requested correction to Condition No. 8 of Z.C. Order No. 920. (Ex. 4.) OP concluded that the requested modification would not change the material facts upon which the Commission based its original approval of the Approved PUD, and that the request would not modify the size or overall design of the existing building, decrease the public benefits or amenities, or weaken any approved covenants. OP further concluded that the proposed design changes would enhance both the appearance and utility of the building as experienced from the adjacent public space.
9. On July 2, 2018, ANC 2C submitted a report into the record noting that, at a regularly scheduled, duly noticed meeting of the ANC on May 14, 2018, with a quorum present, ANC 2C voted 3-0-0 to support the application and stated no issues or concerns. (Ex. 5.)

CONCLUSIONS OF LAW

Pursuant to Subtitle Z § 703.1, the Commission, in the interest of efficiency, is authorized to make "modifications of consequence" to final orders and plans without a public hearing. A modification of consequence is "a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance." (11 DCMR Subtitle Z § 703.3.) Examples of modifications of consequence "include, but are not limited to, a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission." (*Id.* § 703.4.)

The Commission concludes that the modifications requested in the subject application and depicted in the plans submitted as Exhibit 2C are modifications of consequence and, therefore, can be granted without a public hearing.

The Commission finds that the proposed modifications are consistent with the Commission's previous approval of the Approved PUD. The use of the Property has not changed, and the Applicant is only proposing a redesign of architectural elements of the building that do not diminish or detract from the Commission's original approval of the PUD project as well as a needed correction to Z.C. Order No. 920.

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 contained in the written report of an affected ANC. In this case, ANC 2C's report stated no issues and concerns. The Commission concurs with OP's

recommendation to approve this modification of consequence application, including the requested correction to Condition No. 8 of Z.C. Order No. 920. 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 a modification of consequence to the consolidated PUD project approved in Z.C. Order No. 01-01MM/99-6M/88-16C. The conditions in the Approved PUD remain unchanged, except as follows. Conditions Nos. 1 and 8 of Z.C. Order No. 920 is revised to read as follows:

1. The PUD site shall be developed in accordance with the plans prepared by Davis Carter Scott, marked as Exhibits 20 and 44 as modified by the plans contained in Exhibit 2C in Z.C. Case No. 01-01A and as further modified by the guidelines, conditions, and standards of this Order


8. With regard to retail tenant signage and awnings, the applicant shall be permitted to install a variety of retail tenant signage and awnings via one or a combination of the following methods: (i) colored signage and awnings with applied tenant lettering located on the sign panel and backlighting; or (ii) metal signband with tenant lettering inset into signband and backlighting, as shown in Exhibit 44. Awnings may be installed at the ground level of the building. Covering materials may be canvas or similar non-rubberized cloth material, glass, or metal. Vinyl, or other plastic-like sheeting is not acceptable. Awning surfaces may be of any color or pattern. Awning edges shall be straight lines; scallops, curves, fringes, etc. are not acceptable. Signage and logos may be placed horizontally in the sign box at the front edge of the canopy. Lettering and logos may not be placed on sides, tops, or sloping surfaces of the awnings.

On July 30, 2018, upon the motion of Commissioner May, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **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 shall become final and effective upon publication in the *D.C. Register*; that is, on September 14, 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