GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION ORDER NO. 01-01B
Z.C. Case No. 01-01B
BP/CRF 901 New York Avenue, LLC
(Modification of Consequence of Consolidated PUD @ Square 372
[901 New York Avenue, N.W.])
March 25, 2019

Pursuant to public notice, the Zoning Commission for the District of Columbia (the "Commission") held a public meeting on March 25, 2019 at which the Commission considered the application of BP/CRF 901 New York Avenue, LLC (the "Applicant") for a Modification of Consequence (the "Application") of the consolidated planned unit development ("PUD") approved by Z.C. Order No. 920, as amended, for Lot 34 in Square 372 (the "Property"). The Commission reviewed the Application pursuant to the Commission's Rules of Practice and Procedure, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (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

1. In 1988, the Commission first approved a PUD to construct an office building with ground-floor retail (the "Building") on the Property in Z.C. Case No. 88-16C by Z.C. Order No. 629 (the "Approved PUD," as subsequently amended), which the Commission subsequently extended by Z.C. Order Nos. 629A through 629F.

2. In 2000, the Commission approved a modification and expansion of the Approved PUD, with a related Zoning Map amendment, in Z.C. Case No. 99-6M/88-16C by Z.C. Order No. 920, which approved a rezoning from C-3-C, HR/C-3-C, and DD/C-3-C to C-4 and the modification of the Building to have the density of a 10.0 floor area ratio ("FAR"), a height of 130 feet, and approximately 532,505 square feet of gross floor area.

3. In 2001, the Commission approved a minor modification to the Approved PUD in Z.C. Case No. 01-01MM/99-6M/88-16C by Z.C. Order No. 920-A, 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.

ZONING COMMISSION
District of Columbia
CASE NO.01-01B
EXHIBIT NO.10

4. In 2018, the Commission approved a modification to the Approved PUD in Z.C. Case No. 01-01A/01-01MM/99-6M/88-16C by Z.C. Order No. 01-01A, to permit revisions to the Building's entrances along New York Avenue and K Street.

5. The Application proposed to revise the Approved PUD to modernize the Building by establishing a Design Manual that establishes general design rules for ground-floor commercial storefronts and within which design rules the Applicant has flexibility to accommodate specific tenant needs. (Exhibits ["Ex."] 2, 2C1, 2C2.) The Design Manual provides guidance for anchor storefronts along corner-location tenant spaces, for in-line storefronts interior to the building façades, and for façade materials and cladding, glazing, lighting, and awnings. Within these parameters, the Design Manual allows flexibility to accommodate tenant-specific design needs including the ability to paint grills in anchor tenant areas and to incorporate operable façades to connect with outdoor seating and abutting the streetscape. The Design Manual depicts tenant-specific renovations for the eastern corner of the building's ground floor as an example of the applicability of the design guidelines.

6. In addition to the Design Manual, the Application proposed to change Condition 8 of Z.C. Order No. 920 to authorize limited signage proposed in the Design Manual.

7. The Applicant served the only other party, Advisory Neighborhood Commission ("ANC") 2C, as attested by the Certificate of Service submitted with the Application. (Ex. 2.)

8. The District Department of Transportation ("DDOT") submitted a report on March 8, 2019, stating that it had no objection to the Application but noted that the Applicant would have to obtain a public space permit for proposed changes to the public space adjacent to the Property. (Ex. 5.)

9. In response to comments from the Office of Planning ("OP") and ANC 2C, the Applicant revised the Application, including removing the proposed upper-story office tenant signage, prohibiting public space signage, installing potential sidewalk café space along K Street, and committing to maintain uniform awning height along street frontages. (Ex. 6-6A2.) The Applicant also proposed revising Condition 1 of the Order to incorporate the Design Manual as part of the approved plans.

10. OP submitted a report on March 19, 2019, agreeing that the Application qualified as a Modification of Consequence and recommending approval of the Application based on the changes agreed to by the Applicant in its revised Application. (Ex. 6, 7.)

11. ANC 2C submitted a written report stating that, at a regularly-scheduled and duly-noticed meeting held on March 22, 2019, with a quorum present, ANC 2C voted to support the Application, as revised, to include the ANC's conditions, including removing the upper-story office tenant signage, installing potential sidewalk café space along K Street

(immediately to the east of the K Street entrance), and committing to maintaining uniform heights of awnings along strong frontages. (Ex. 6-6A2, 8.)

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, … or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission" as examples of a Modification of Consequence.

4. 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 architectural elements of the Building and to modify conditions in the Order, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).

5. 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 2C.

6. The Commission determines that because OP and ANC 2C, the only party other than the Applicant to the PUD, had filed responses 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 so the Commission could consider the merits of the Application at the March 25, 2019 public meeting.

7. The Commission finds that the modification proposed by the Application is consistent with the PUD approved by Z.C. Order No. 920 because the Application only proposes to modify the architectural details and clarify the signage limitation of the Building.

"Great Weight" to the Recommendations of OP

8. D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8 require the Commission to give "great weight" to the recommendations contained in the OP Report. The Commission found OP's recommendations that the Application qualified as a Modification of Consequence and that the Commission approve the Application persuasive and concurred in that judgment.

"Great Weight" to the Written Report of the ANC

9. D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.) and Subtitle Z § 406.2 require the Commission to give "great weight" to the issues and concerns contained in the written report of an affected ANC. The Commission found ANC 2C's support for the Application, subject the revisions adopted by the Applicant in Exhibit 6, persuasive and concurred in that judgment.

DECISION

At its public meeting on March 25, 2019, in consideration of the case record and Findings of Fact and Conclusions of Law herein, upon the motion of Commissioner Shapiro, as seconded by Commissioner Turnbull, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a Modification of Consequence to the consolidated PUD approved in Z.C. Order No. 920, as amended by Z.C. Order Nos. 920-A and 01-01A, subject to the following conditions by a vote of **4-0-1** (Anthony J. Hood, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve; Robert E. Miller, not present, not voting).

The conditions in Z.C. Order No. 920, as amended by Z.C. Order Nos. 920-A and 01-01A, remain unchanged, except that Condition Nos. 1 and 8 are revised to read as follows (additions in **bold and underlined** text):

1. The PUD site shall be developed in accordance with the plans prepared by Davis Carter Scott, marked as Exhibits 20 and 44 **in Z.C. Case No. 99-6M/88-16C**, as modified by the plans contained in Exhibit 2C in Z.C. Case No. 01-01A**, and the plans contained in Exhibits 6A1-6A2 in Z.C. Case No. 01-01B,** and as further modified by the guidelines, conditions, and standards of this Order.

…

8. **The restrictions and requirements of the comprehensive design manual contained in Exhibit 6A in Z.C. Case No. 01-01B shall, in combination with these conditions, govern the building's retail signage and storefronts, as specified therein.** 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 **in Case No. 99-6M/88-16C, as amended by Exhibits 6A1-6A2 of Z.C. Case No. 01-01B**. Awnings may be installed at the ground level of the building. **Awnings along each of the three street frontages shall be of a uniform height as to the relevant street frontage as measured to the highest point at which they are attached and shall not extend vertically above the upper limit of the grills between the first and second floors. Other than awnings serving outdoor café seating areas, awnings shall be contained within individual bays and shall not span more than one bay.** 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. **Awnings serving outdoor café seating areas may extend across stone piers to create a unified area beneath a singular canopy. Such awnings shall not be a single uniform color but shall be designed with a pattern in order to break down their mass.** Signage and logos may be placed horizontally in the sign box at the front edge of the canopy. Signage lettering and logos may not be placed on sides, tops, or sloping surfaces of the awnings **while graphics or artwork on the inclined portion of awning canopies shall be subject to the public space permitting process. Blade signs shall not extend above the top of the second floor, and there shall be no signs above the second floor of the building. No signage may be included on the fences, walls, or planters enclosing sidewalk cafes nor on other ground-level projections into public space. With respect to the existing stone columns of the building façade and the building's corners, there shall be no changes to the materials or color of the most prominent vertical columns that extend from the base of the building to the top. Cladding of these columns shall not be permitted. Grills between such columns in storefront zones, as shown on Exhibits 6A1-6A2 of Z.C. Case No. 01-01B, may be painted. Varying materials and painting is permitted within the storefront zones between these columns, up to the top of the grills between the first and second floors within the "in-line storefront zones" and up to the top of the second floor for the "anchor storefront zones." The horizontal stone façade elements that separate certain areas of the second and third floors in the "anchor storefront zones," as shown in the Design Manual, may be clad but may not be removed or painted.**

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 August 2, 2019.

BY 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

for **SARA A. BARDIN**
DIRECTOR
OFFICE OF ZONING