

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 01-07A
Z.C. Case No. 01-07A
1700 K Street Associates, LLC
(Minor Modification to the Consolidated PUD @ Square 126, Lot 62)
September 17, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public meeting on September 17, 2018 to consider an application by 1700 K Street Associates, LLC (“Applicant”)¹ for a minor modification to a consolidated planned unit development (“PUD”) approved by Z.C. Order No. 961 in Z.C. Case No. 01-07C for the property at 1700 K Street, N.W., and more particularly identified as Square 126, Lot 62 (“Property”). The minor modification request was made pursuant to Subtitle Z, Chapter 7, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). For the reasons stated below, the Commission approves the application.

FINDINGS OF FACT

1. Pursuant to Z.C. Order No. 961 in Z.C. Case No. 01-07C, dated January 14, 2002, and effective on June 28, 2002 (“Order”), the Commission approved an application for consolidated review of a PUD. The PUD authorized construction of a commercial office development consisting of approximately 370,981 square feet of gross floor area on private property and 2,244 square feet of gross floor area in the public airspace, for a total of 373,135 square feet of gross floor area. The overall height of the building is 130 feet, with a density of 11.08 floor area ratio (“FAR”). As part of the PUD, the Commission also approved the rental of public airspace over a small portion of the alley. The project was completed in 2005. In 2017, the portion of the alley rented as public airspace was closed and the airspace lease between the Applicant and the District was terminated.
2. At the time the PUD was approved, penthouses were not permitted to include habitable space and were limited to a total height of 18 feet, six inches. Since that time, the 1910 Height of Buildings Act was amended, and the Zoning Regulations were changed to permit an overall penthouse height of 20 feet and two stories in the D-6 zone in which the property located, and to allow habitable space. The Applicant now wishes to enhance the building under these provisions.

¹ The original PUD applicant was Commerce Building Associates and Riddell Building Joint Venture. The current Applicant and owner of the property is 1700 K Street Associates, LLC.

3. On July 17, 2018, the Applicant filed an application with the Commission seeking a minor modification to Z.C. Order No. 961 to add penthouse habitable space, including a roof terrace.
4. The Applicant would extend the existing penthouse approximately 30 feet to the east. The expanded penthouse area would provide approximately 1800 square feet of gross floor area of habitable space devoted to amenity space, an outdoor terrace, and green roof space. Although the new penthouse regulations permit a height of 20 feet, the Applicant would maintain a uniform height of 18.5 feet for the existing mechanical penthouse. The new portion of the penthouse would have a second height of 13 feet, as permitted under 11-C DCMR § 1500.9. The new portion of the penthouse amenity space, located on the east side of the building, would have a 2.2-foot parapet and a retractable awning.
5. The expanded penthouse would continue to meet or exceed the 1:1 setback requirement at the north, west and east exterior walls. Along K Street to the north, the penthouse would continue to be set back 24.5 feet. Along 17th Street, the penthouse would be set back 20 feet, 1.5 inches. For the majority of the south exterior wall, the penthouse would be setback 29.5 feet, except for a small portion of the existing penthouse adjacent to the alley cul-de-sac where the Commission granted relief for a setback of 9.33 feet. The setback at that location would remain at 9.33 feet, as approved by the Commission. In all other respects, the penthouse complies with the setback requirement.
6. Pursuant to 11-C DCMR § 1505, the Applicant would contribute to the Affordable Housing Trust Fund to assist in the production of affordable housing to low-income households. Consistent with the formula set forth in that section, the Applicant estimates that it would contribute approximately \$225,000, based on the current assessed value of the land. The final amount of the contribution will be determined no earlier than 30 days prior to the date of the building permit application to construct the penthouse habitable space. One-half of that payment will be made prior to issuance of the building permit for that space with the balance paid prior to issuance of the certificate of occupancy for the space.
7. At its public meeting on September 17, 2018, the Commission determined that this application was properly a minor modification within the meaning of 11-Z DCMR § 703.2, and that no public hearing was necessary pursuant to 11-Z DCMR § 703.1.
8. In satisfaction of 11-Z DCMR § 703.13, the Applicant provided a Certificate of Service, which noted that Advisory Neighborhood Commission (“ANC”) 2B was served with the application. ANC 2B did not submit any recommendation to the file.
9. On September 14, 2018, the Applicant requested the Commission waive the notice requirement to a party to the original proceeding. Under 11-Z DCMR § 703.13, the Applicant was required to formally serve a copy of the application on all parties to the original proceeding at the same time that it filed the application with the Office of Zoning. In 2002, when the original PUD was approved, the only parties in the proceeding were the ANC and KV Sun Holdings, LP, which at the time was owner of the adjacent Barr Building at 910 17th Street, N.W. KV Sun Holdings, LP no longer owns the adjacent building nor

can be located as a continuing entity. The Land Records of the District of Columbia reveal that on December 2, 2003, KV Sun Holdings, LP, sold the property to the Barr Building LLC, by deed recorded as Document No. 2003170185. A DCRA online records search for KV Sun Holdings, LP, reveals that the LP withdrew its foreign corporation registration in 1998 and no further information could be located on that entity. On September 17, 2018, at its regular monthly meeting, the Commission granted the request for waiver of the notice requirement.

10. The Office of Planning (“OP”) submitted a report on September 7, 2018. The OP report recommended approval, as a minor modification, of the application to add penthouse habitable space, including a roof terrace.

CONCLUSIONS OF LAW

Pursuant to 11-Z DCMR § 703.1, the Commission is authorized to approve minor modifications to approved final orders and plans through a consent calendar procedure without a public hearing. Pursuant to 11-Z DCMR § 703.2, a minor modification “is one that does not change the material facts upon which the Commission based its original approval of the application or petition.” In addition, 11-C DCMR § 1504.3 provides that a request to add penthouse habitable space to a building approved by the Commission as a PUD may be filed as a minor modification for placement on the Commission’s consent calendar, provided that (a) the item shall not be placed on a consent calendar for a period of 30 days’ minimum following the filing of the application; and (b) OP shall submit a report with recommendations a minimum of seven days in advance of the meeting.

The Commission concludes that the modifications described herein do not change the material facts upon which the Commission based its original approval, and that the proposed modifications are to add penthouse habitable space to a building previously approved as a PUD. Accordingly, the Commission finds that the request falls within the scope of a minor modification made pursuant to 11-Z DCMR § 703 and 11-C DCMR § 1504.3.

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 of contained in the written report of an affected ANC. ANC 2B meets the definition of “affected ANC” as set forth in 11-B DCMR § 100.1. Since ANC 2B did not address this minor modification, there is no recommendation to consider. The Commission is also required give great weight to the recommendations of OP (*See* D.C. Official Code § 6-623.04 (2012 Repl.)). The Commission concurs with OP’s recommendation to approve this minor modification application.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for a minor modification to permit the addition of penthouse habitable space and a rooftop terrace to the building located at 1700 K Street, N.W., consistent with the architectural plans and elevations included in the record at Exhibit 4.

At its public meeting of September 17, 2018, upon the motion of Commissioner Turnbull, as seconded by Chairman Hood, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter Shapiro not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on November 23, 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. BORDIN
DIRECTOR
OFFICE OF ZONING