

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-04I

Z.C. Case No. 06-04I

Florida & Q Street LLC

(Modification of Consequence of PUD and Related Map Amendment

@ 1600 North Capitol Street, N.W. (Lot 48 in Square 3100))

September 23, 2019

Pursuant to notice, at its September 23, 2019, public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Florida & Q Street LLC (the “Applicant”) for a Modification of Consequence to Condition Nos. 1 and 12 of Z.C. Order No. 06-04 (the “Original Order”) that had approved a planned unit development (a “PUD”), as modified by Z.C. Order Nos. 06-04C and 06-04E, for Lot 48 in Square 3100, with a street address of 1600 North Capitol Street N.W. (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 (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 consolidated PUD approval for the Property, together with a map amendment from the C-2-A to the C-2-B zone district to permit the construction of a new mixed-use building (the “Approved PUD”).
2. In Z.C. Order Nos. 06-04A, 06-04B, and 06-04D, the Commission approved time extensions for the period of time in which the Applicant was required to file for a building permit.
3. In Z.C. Order No. 06-04C, the Commission approved a modification to Condition Nos. 1-9 and 12 of the Approved PUD. The modification of Condition No. 1 reflected changes to the approved plans.
4. In Z.C. Order No. 06-04E the Commission approved a minor modification to the Approved PUD plans to revise the penthouse design and rooftop elements.

5. In Z.C. Order Nos. 06-04F, 06-04G, and 06-04H, the Commission granted three time extensions for the time in which the Applicant was required to begin construction of the PUD. The Applicant is now required to begin construction no later than June 15, 2021.
6. On July 26, 2018, the Historic Preservation Review Board (“HPRB”) voted to establish the Bloomingdale Historic District (the “Historic District”) which went into effect on September 9, 2018. The PUD is located within the Historic District and is therefore subject to historic review by HPRB.
7. The Applicant provided evidence that it submitted the project to HPRB for review at its public meeting of March 7, 2019. HPRB found the design to be generally compatible with the character of the Historic District but suggested a number of design refinements be made prior to final approval. (Exhibits [“Ex.”] 1E-1G)
8. The Applicant provided evidence that it submitted revised plans that HPRB found to be responsive to its comment, and that HPRB subsequently voted to approve at its May 23, 2019 public meeting. (Ex. 1H-1J.)

Parties

9. The only party to the Z.C Case No. 06-04 other than the Applicant was Advisory Neighborhood Commission (“ANC”) 5E, the “affected” ANC pursuant to Subtitle Z § 101.8.

The Application

10. On June 21, 2019, the Applicant filed the Application requesting a Modification of Consequence to authorize a modification to Condition No. 1 of Z.C. Order No. 06-04C, to authorize changes to the Approved PUD plans in order to harmonize the previously approved plans with the design changes approved by HPRB. These changes include:
 - a. A simplified crown element on the central tower (Sheet-2.1A);
 - b. Lowering of the belt course at the second floor to the first floor (Sheet A-2.1A);
 - c. Elimination of the continuous belt courses at the fifth and sixth levels (Sheet A-2.1A);
 - d. Coloration of the sixth floor and projecting bays modified to warmer earth tones (Sheet A-2.1A);
 - e. Recessed projecting corners at the penthouse level, (along central cylinder and a reduced parapet height to 3 feet 6 inches from the height of the main roof (Sheets A-3.7A, A3.8A)
 - f. Introduction of at-risk windows on side elevations (Sheet A-2.3A); and
 - g. Painting of the garage door to match brickwork banding (Sheet A-2.2A).(Ex. 1K1-1K2.)
11. The Application also seeks a modification to Condition No. 12(a)(vii) of Z.C. Order No. 06-04C to modify the purpose of the contribution made to the Eckington Civic Association (“ECA”) to include public space activation and beautification activities, per the request of the ECA.

12. The Applicant provided evidence that on June 21, 2019 it properly served the Application to ANC 5E, the Office of Planning (“OP”), the ECA, and the Bloomingdale Civic Association, as attested by the Certificate of Service submitted with the Application. (Ex. 1.)
13. OP submitted a report dated July 12, 2019 stating no objection to the Application being considered as a Modification of Consequence and recommending approval of the Application (the “OP Report”). (Ex. 4.) The OP Report noted that the proposed design changes had already been subject to a public hearing through the HPRB review process.
14. ANC 5E submitted a written report stating that at its duly noticed public meeting of September 17, 2019, at which a quorum was present, ANC 5E voted to support the Application (the “ANC Report”). (Ex. 5.)

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 5E.
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 a condition and to redesign the architectural elements approved by the Original Order, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission concludes that because ANC 5E, the only party other than the Applicant to the Approved PUD, had filed a response 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 therefore the Commission could consider the merits of the Application at its September 23, 2019 public meeting.
7. The Commission finds that the modification proposed by the Application is consistent with the Approved PUD because the proposed design changes are responsive to the concerns of HPRB and are consistent with the Commission’s original approval and because the

Commission also concludes that the proposed changes to Condition No. 12(a)(vii) do not change either the recipient of the proposed donation nor the amount.

“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.
9. 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 concurs in that judgment.

“Great Weight” to the Written Report of the ANC

10. 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. 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. 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).
11. The Commission finds the ANC Report’s support for the Application persuasive and concurs in that judgment.

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 revise the plans approved by and Condition Nos. 1 and 12(a)(vii) of Z.C. Case No. 06-04, as modified by Z.C. Case Nos. 06-04C and 06-04E.


The conditions in Z.C. Order No.06-04, as modified by Z.C. Order Nos. 06-04C and 06-4E, now in effect, remain unchanged, except that Condition Nos. 1 and 12(a)(vii) are hereby amended and restated as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions shown in **bold** and underlined text):


1. The PUD shall be developed in accordance with the plans prepared by Bonstra Haresign Associates, dated September 13, 2013, ~~at and marked as~~ Exhibit No. 18A1-18A6 ~~of the record in Z.C. Case No. 06-04C~~ (the “Plans”), as modified by:
 - the plans prepared by Bonstra Haresign Associates, dated May 12, 2015, at Ex. 1G in Z.C. Case No. 06-04E;
 - the plans prepared by Bonstra Haresign Associates, dated June 7, 2019, at Ex. 1K1-1K2, Sheets A-2.1A, A-2.2A, A-2.3A, A-3.7A, and A-3.8A in Z.C. Case No. 06-04I; and
 - the guidelines, conditions, and standards herein.

- 12.a.vii. \$6,600 to the Eckington Civic Association for the ~~purchase of equipment and materials necessary~~ **development and maintenance of develop** a neighborhood website and/or a community newsletter, as well as for ~~the creation of a funds~~ to assist seniors with quality-of-life issues, **including snow shoveling and other one-time needs, and for efforts to beautify and activate public space in Eckington, including the creation of an entity to support local parks and arts.**

VOTE (September 23, 2019): **5-0-0** (Michael G. Turnbull, Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Peter G. May to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order No. 06-04I, shall become final and effective upon publication in the *DC Register*; that is, on October 25, 2019.


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.