

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-21B
Z.C. Case No. 10-21B
V Street S.W., LLC
(Design Review Modification of Consequence @ Square 667S)
February 26, 2018

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on February 26, 2018. At that meeting, the Commission approved the application of V Street S.W., LLC (“Applicant”) for a modification of consequence to the approved design for property owned by the Applicant. The previously approved design was pursuant to the Capitol Gateway (CG) Overlay District provisions (“CG Overlay District Review”) set forth in former §§ 1603 and 1610 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The property that is the subject of this application consists of Lot 16 in Square 667S (“Property” or “Subject Property”). The modification request was made pursuant to Section 703 of the Commission’s Rules of Practice and Procedures which are codified in Subtitle Z of Title 11 of DCMR.

FINDINGS OF FACT

1. By Z.C. Order No. 10-21, dated June 27, 2011 and effective August 12, 2011, the Commission approved the design of a mixed-use residential/retail project to include 75-110 residential units, approximately 1,800 square feet of retail space located on the ground floor, 116 vehicle parking spaces, and 48 bike spaces (“Project”).
2. The Property is located on the south side of V Street, S.W. between Half Street and 1st Streets, on a site consisting of Lot 16 in Square 0667S in the neighborhood known as Buzzard Point.
3. On November 8, 2016, the Applicant submitted a previous application requesting approval of a modification of significance for the approved Project. The Applicant requested approval to modify the previous half-circular plan to permit a more standard rectangular plan. Changes to the penthouse in accordance with the new penthouse regulations, which permit the inclusion of habitable space, were also proposed. That modification of significance was approved pursuant to Z.C. Order No. 10-21A¹. The

¹ Z.C. Order 10-21A contains errors in the case caption and decision paragraph where it refers to the approval as a “modification of consequence.” The Commission required a hearing in the case, and decided it pursuant to 11-Z DCMR § 704, making it a modification of significance.

Project, Plans, and conditions approved in Z.C. Case No. 10-21A replaced those approved in Z.C. Case 10-21.

4. On January 3, 2018, the Applicant submitted an application for a modification of consequence seeking approval of the redesign of several Project architectural elements. The redesign was primarily driven by a determination by the Department of Energy and Environment requirement that the Project comply with the 500 year flood plain, rather than a 100-year floodplain, as previously required.
5. On January 19, 2018, the Office of Planning (“OP”) submitted a report stating that OP believed the requested changes comply with the definition of a modification of consequence because they are changes to the design of the Project’s architectural elements, and that the changes proposed are consistent with the original approval and the intent of the CG zone. OP requested that the Applicant submit additional information including sample images of some of the proposed, new exterior materials, and the design of the rooftop terrace prior to their making a final recommendation.
6. The Commission, at its January 29, 2018 public meeting, determined that the application was properly a modification of consequence within the meaning of 11-Z DCMR §§ 703.3 and 703.4, and that therefore no public hearing was necessary. The Commission also established a timeframe for the parties in the original proceeding, in this case just Advisory Neighborhood Commission (“ANC”) 6D, to file a response to the application and for the Applicant to respond thereto, and scheduled the Commission’s further deliberations, as required by 11-Z §703.17(c)(2). In addition, the Commission ordered that the Applicant submit the additional information and sample materials requested by OP in its report. The Commission directed the Applicant to submit the additional information by February 12, 2018 and requested that OP and ANC 6D file any responses thereto by February 20, 2018.
7. On February 12, 2018, the Applicant made a supplemental submission requested by OP including the sample images of the proposed new building materials and roof terrace design. No additional submission was received from ANC 6D. ANC 6D had previously submitted a letter dated January 9, 2018 indicating that the ANC voted 7-0-0 to support the modification of consequence.
8. OP submitted a final report, dated February 20, 2018, indicating that upon review of the additional materials previously requested by OP, it recommends approval of the application as a modification of consequence.

CONCLUSIONS OF LAW

Pursuant to 11-Z DCMR § 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 means “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.” (11-Z DCMR § 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.” (11-Z DCMR § 703.4.)

The Commission concludes that the modifications depicted in the plans included in the record in this case, and as described in the above Findings of Fact, are modifications of consequence, and therefore can be and granted without a public hearing.

The Commission finds that the proposed modifications are entirely consistent with the Commission’s previous approval. The use of this building has not changed and the Applicant is only proposing the redesign and relocation of architectural elements of the building that do not diminish or detract from the Commission’s original approval of the Project. The Commission concludes that the application warrants approval.

The Commission is required under § 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)) to give “great weight” to the issues and concerns raised in the written report of the affected ANC. ANC 6D meets the definition of “affected ANC” as set forth in 11-B DCMR § 100.1. ANC 6D’s report stated that it supported the application, retained the concerns about the Project that were listed in the ANC report for the Project that were submitted in Z.C. Case 10-21A, and expressed no new issues or concerns.

With respect to the issues and concerns expressed in ANC 6D’s report submitted in Z.C. Case 10-21A, the Commission addressed them in Z.C. Order 10-21A.

Because the ANC expressed no new issues or concerns, there is nothing else for the Zoning Commission to give great weight to. *See Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016). The Commission carefully considered ANC 6D’s position supporting approval of the application and concurred in its recommendation of approval.

The Commission is also required give great weight to the recommendations of OP by § 5 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.) The Commission concurs with OP’s recommendation to approve this modification of consequence application.

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 Project and plans approved in Z.C. Case No. 10-21A. The conditions in Z.C. Order No. 10-21A remain unchanged, except Condition No. A.1 is replaced as follows:


1. The Project shall be developed in accordance with the plans marked as Exhibits 24L1-24L9, as modified by Exhibit 27, and Exhibits 29-30 of the record in Z.C. Case No. 10-21A and as further modified by Exhibits 1C and 6A of the record in Z.C. No. 10-21B.

On February 26, 2018, upon the motion of Chairman Hood, 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 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on August 3, 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