

**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. 15-18B
Z.C. Case No. 15-18B
Initio, LP
(Modification of Consequence for PUD @ Square 1194, Lot 811)
November 19, 2018**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public meeting on November 19, 2018, to consider an application by Initio, LP (“Applicant”) for a modification of consequence for the planned unit development (“PUD”) approved by Z.C. Order No. 15-18 for the parcel located at 2715 Pennsylvania Avenue, N.W., and more particularly identified as Square 1194, Lot 811 (“Property”). The modification of consequence 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 hereby approves the application.

FINDINGS OF FACT

A. The Application, Parties, Hearing, and Post-Hearing Filings

1. Pursuant to Z.C. Order No. 15-18, dated January 30, 2017, and effective March 10, 2017 (“Order”), the Commission approved an application for consolidated review of a PUD and a related Zoning Map amendment from the C-2-A Zone District/unzoned to the W-2 Zone District for the Property in order to permit the redevelopment of the Property with a mixed-use building that has a restaurant on the ground floor and a four-story apartment house with seven residential units above. In connection with the PUD, the Commission waived the minimum area requirements of Sec. 2401.1 of the 1958 Zoning Regulations to permit a land area of 7,413 square feet.
2. Pursuant to Z.C. Order No. 15-18A, the Commission granted a minor modification of the PUD in order to vacate Findings of Fact Nos. 37 and 38 and Conclusions of Law No. 4 in Z.C. Order No. 15-18 in order to affirm the waiver of the minimum lot area requirements pursuant to Subtitle X § 301 of the Zoning Regulations of 2016 and not § 2401 of the 1958 Zoning Regulations.
3. The Applicant filed Z.C. Case No. 15-18B on August 10, 2018, seeking either a technical correction or modification of consequence to change the size of the subject property from 7,413 square feet to 7,211 square feet. The reduction was

due to a discrepancy in the land area noted on the assessment and taxation plat that created Lot 811 and the land area noted on the underlying record lot for Lot 15.

4. Pursuant to a letter dated August 22, 2018, the Applicant amended the application to seek a modification of consequence for all of the following:
 - (a) A reduction in the size of the subject property from 7,413 square feet to 7,211 square feet;
 - (b) Minor changes to the roof structures, including an increase in the height of the elevator overrun from 15'-0" to 18'-1 ½"; and
 - (c) A change in the brick color on the building from red to a mid-tone gray.(Exhibit ("Ex.") 5.)
5. In a letter dated September 18, 2018, the application was further amended to include a request from flexibility from the lot occupancy requirements. (Ex. 9.) Specifically, the Applicant requested flexibility to have a lot occupancy of 76.9% where a maximum of 75% is permitted for the W-2 Zone District. The PUD was originally approved with a lot occupancy of 74.8%; however, the reduction in the size of the property from 7,413 square feet to 7,211 square feet, resulted in an increase in the lot occupancy.
6. Advisory Neighborhood Commission ("ANC") 2E was the only other party to the case.
7. In a letter to the Commission dated September 13, 2018, ANC 2E acknowledged that it was provided with a copy of application seeking to reduce the size of the property from 7,413 square feet to 7,211 square feet, that it was afforded the opportunity to comment on the amendment, and that it took no position on the matter. (Ex. 8.)
8. After the application was amended to include the additional modification requests, ANC 2E filed letters with the Commission dated October 9, 2018, acknowledging that it was provided a copy of the proposed amendments to the PUD, that it was afforded the opportunity to comment on the amendments, and that it took no position on the matter. (Ex. 10-11.)
9. In satisfaction of 11-Z DCMR § 703.13, the Applicant provided a Certificate of Service, which noted that ANC 2E was served with the application.
10. The Office of Planning ("OP") submitted a report on September 7, 2018. (Ex. 7.) The OP report recommended approval of the application.

CONCLUSIONS OF LAW

1. Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized 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.)
2. The Commission concludes that the modifications requested and as described in the above Findings of Fact, are modifications of consequence and, therefore, can be granted without a public hearing.
3. Although the request for flexibility of the lot occupancy constitutes additional flexibility from the Zoning Regulations for the PUD, the Zoning Commission concludes that said flexibility should be approved as a modification of consequence without a public hearing. There are no issues or concerns that would benefit from a public hearing. As noted in the OP report, there is no change in the bulk, size and intensity of use of the approved PUD, and no change to any impacts generated by the PUD that were not already considered in the original PUD approval.
4. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendation. In this case, ANC 2E voted to take no position on the application. (*See Ex. 8, 10.*)

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 and related Zoning Map amendment application approved in Z.C. Case No. 15-18, as modified in Z.C. Case No. 15-18A as follows:

1. The size of the Property shall be reduced from 7,413 square feet to 7,211 square feet.
2. The PUD shall be developed in accordance with the plans titled “2715 Pennsylvania Avenue” prepared by Souto Moura Arquitectos, dated July 1, 2016 and marked as Exhibits 28H1 and 28H2 in Z.C. Case No. 15-18, and the supplemental lighting plans, dated October 11, 2016, and marked as Exhibits 49A1 and 49A2 (“Plans”) in Z.C. Case No. 15-18, except as modified as follows:
 - (a) The Applicant shall have flexibility to provide a lot occupancy of 76.9% where a maximum of 75% is permitted in the W-2 Zone District, as reflected on the zoning chart marked as Exhibit 6A of the record;


- (b) The permitted height of the elevator overrun for the PUD shall be 18'-1 ½" as reflected on the plans marked as Exhibit 5G of the record; and
- (c) The brick color on the building shall be a mid-tone gray as reflected on the architectural renderings and plans marked as Exhibit 5I of the record.

3. All of the other conditions in Z.C. Order No. 15-18 and 15-18A shall remain unchanged.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. 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 identify or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On November 19, 2018, upon the motion of Commissioner Miller, as seconded by Commissioner Shapiro, the Zoning Commission **APPROVED** 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 *D.C. Register*; that is, on December 28, 2018.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING