

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-03B
Z.C. CASE NO. 16-03B
DB Residential Hill East, LLC
(Modification of Consequence of a Design Review Approval
@ Square 1112E, Lots 802, 803, and 804)
October 16, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on October 16, 2017. At that meeting, the Commission approved the application of DB Residential Hill East, LLC (“Applicant”) for a modification of consequence of the design review application approved by Z.C. Order No. 16-03, as modified by Z.C. Order No. 16-03A, for Square 1112E, Lots 802, 803, and 804 (collectively the “Property”). The modification request was made pursuant to Subtitle Z, Chapter 7 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

FINDINGS OF FACT

THE PROPERTY

1. The Property consists of two parcels in the Hill East District – Parcel F-1 and Parcel G-1. These two parcels total approximately 2.6 acres, and are the first parcels in the 67-acre area, formerly known as Reservation 13, to be developed implementing the vision and objectives of the Hill East Waterfront Master Plan. The Property is currently used as a surface parking lot for the Department of General Services, the Department of Corrections, and the Department of Health.
2. Parcel F-1 is located in the HE-1 zone, and consists of 60,862 square feet. It is bounded on the west by 19th Street, on the north by Burke Street, and on the south by C Street, all of which are considered secondary streets under the Hill East design guidelines.
3. Parcel G-1 is located in the HE-1 and HE-2 zones, and consists of 87,614 square feet. It is bounded on the west by 19th Street, on the north by C Street, on the south by Massachusetts Avenue, and on the east by 20th Street. C Street, 20th Street, and 19th

Street are secondary streets and Massachusetts Avenue is a primary street under the Hill East design guidelines.

4. The Property is located within the Anacostia Waterfront Development Zone. Therefore, the project must comply with the affordable housing requirements contained in the National Capital Revitalization Corps and Anacostia Water Corporation Reorganization Act of 2008” (“AWI Act”). (D.C. Official Code §§ 2-1226.01 et seq. (2008)). (See *D.C. Official Code § 2-1226.02.*) The AWI Act requires that at least 30% of the total housing units developed must be affordable – 15% reserved for households earning up to or at 30% of the area median income (“AMI”) and 15% reserved for households earning up to or at 60% of the AMI.

PREVIOUS APPROVALS

5. Pursuant to Z.C. Order No. 16-03, dated May 12, 2016, the Commission approved a design review application and related special exception approval from the requirements of § 2815.6 for the location of garage entrances, and variance relief from the requirements of §§ 2101.1, 2115.2, 2115.4, 2201.1, 2807.1, 2808.1, and 2815.1-2815.4, with regard to maximum building height, parking, loading, percentage and grouping of compact spaces, and Inclusionary Zoning (“IZ”).
6. The building on Parcel F-1, or Building F-1, was approved as a four-story building containing approximately 13,400 square feet of retail space and 91 residential units. Of those units, 14 will be affordable units reserved for households not exceeding 30% AMI and 14 will be affordable units reserved for households not exceeding 60% AMI. It will have a maximum height of 52 feet, approximately 106,460 square feet of gross floor area, and a density of 1.86 floor area ratio (“FAR”). The western portion of Parcel F-1, fronting on 19th Street, will be maintained as an open plaza area that will be maintained by the Applicant.
7. The building on Parcel G-1, or Building G-1, was approved as a four-story building containing approximately 13,800 square feet of retail and 258 residential units. Of those units, 39 will be affordable units reserved for households not exceeding 30% AMI and 39 will be affordable units reserved for households not exceeding 60% AMI. It will have a maximum height of 53 feet on the portion of the parcel in the HE-1 zone and 69 feet on the portion of the parcel in the HE-2 zone, approximately 286,808 square feet of gross floor area, and a density of 3.27 FAR. The western portion of Parcel G-1, fronting on 19th Street, will be maintained as an open plaza area that will be maintained by the Applicant.
8. Pursuant to Z.C. Order No. 16-03A, dated May 8, 2017, the Commission approved a modification of consequence that allowed for updates to the civil and architectural drawings, revised layouts to the roof plans for both buildings, and design changes to the courtyard for Building F-1.

9. The parties to the original Commission cases were the Applicant and Advisory Neighborhood Commission (“ANC”) 7F, the ANC in which the Property is located. ANC 6B, the boundary for which is across the street from the Property was provided with a copy of the original application and notice of the public hearing for the original application, as well copies of the previous modification applications and the notice of the public meeting for the modification applications.

SECOND MODIFICATION REQUEST

10. By letter dated August 7, 2017, and pursuant to 11-Z DCMR § 703, the Applicant submitted a request for a second modification of consequence in order to redistribute the 106 affordable units required for the project as follows:

FROM:

Building F-1

91 total residential units
14 ADU’s at 30% AMI
14 ADU’s at 60% AMI

Building G-1

258 total residential units
39 ADU’s at 30% AMI
39 ADU’s at 60% AMI

TO:

Building F-1

91 total residential units
38 ADU’s at 30% AMI
37 ADU’s at 60% AMI

Building G-1

262 total residential units
15 ADU’s at 30% AMI
16 ADU’s at 60% AMI

11. Under the modification, the overall number of units in Building G-1 will increase from 258 to 262, bringing the total number of units for the development from 349 to 353 between both buildings.
12. Pursuant to the AWI Act, of the 353 units proposed for the project, 30% (or 106) units, must be affordable with half of the affordable units (53) being reserved for households with incomes not exceeding 30% AMI, and the other half being reserved for households within incomes not exceeding 60% AMI.

13. While the majority of the affordable units are proposed for Building F-1, the 31 units proposed for Building G-1 constitute approximately 15% of the residential gross floor area of the building, which is higher than the 10% that would be required under the IZ regulations if the building were a stand-alone project.
14. In addition to the redistribution of the affordable dwelling units, the architectural drawings (“Plans”) include minor changes/corrections to the zoning tabulations and building data, except that the Applicant proposes to increase the bicycle parking from 31 to 55 spaces for Building F-1 and from 88 to 139 spaces for Building G-1.
15. The Applicant filed a Certificate of Service with the Commission, which noted that the Applicant served a copy of the modification application on ANC 7F and ANC 6B in accordance with 11-Z DCMR § 703.13.
16. The Office of Planning (“OP”) submitted a report on September 1, 2017. (Ex. 5.) The OP report stated that OP has no objections to the Applicant’s request being considered as a modification of consequence, and recommended approval of the requested modification of consequence.
17. The District Department of Transportation (“DDOT”) did not submit a report to the record.
18. At its September 11, 2017 public meeting, the Commission determined that the application was properly a modification of consequence within the meaning of 11-Z DCMR §§ 703.3 and 703.4, and that no public hearing was necessary pursuant to 11-Z DCMR § 703.1.
19. Pursuant to 11-Z DCMR § 703.17(c)(2), the Commission established a timeframe for the parties in the original proceeding to file a response in opposition to or in support of the request and for the Applicant to respond thereto; and schedule the request for deliberations. The Commission scheduled deliberations on the application for October 16, 2017.
20. Through a written report dated September 19, 2017, ANC 7F indicated that at its regularly scheduled meeting on September 19, 2017, at which a quorum was present, it voted unanimously to support the modification of consequence. (Ex. 6.) In its letter to the Commission, the ANC requested that the 25 two-bedroom units in Building F-1 be designated as affordable units and that neither building be designated as a “Senior Living Complex.”
21. On October 13, 2017, the Applicant submitted a letter in response to ANC 7F’s report agreeing to designate the 25 two-bedroom units in Building F-1 as affordable units, and confirming that there would be no change in the total number of affordable units. (Ex. 7.)
22. On October 16, 2017, the ANC 7F Chairperson submitted a letter requesting the Commission schedule a public hearing regarding the modification request. (Ex. 8.)

23. At its public meeting on October 16, 2017, the Commission called forward the ANC 7F Chair and counsel for the Applicant. After a brief discussion, the Commission held the case in abeyance while the parties discussed their outstanding issues. Upon their return, the counsel for the Applicant indicated that parties agreed that: a) the Applicant would set aside 25 two-bedroom units Building F-1 as affordable units, and (b) that the Applicant need not prohibit a “Senior Living Complex” for either building. Based on this understanding between the parties, the Commission approved the modification application finding that no public hearing was needed.

CONCLUSIONS OF LAW

1. 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.)
2. The Commission concludes that the modifications to redistribute the affordable dwelling units and 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 granted without a public hearing.
3. The Commission finds that the proposed modifications are entirely consistent with the Commission’s previous design review approvals for development of the Property. The Applicant is only proposing to redistribute the affordable dwelling units and make minor changes/corrections to the zoning tabulations and building data that do not diminish or detract from the Commission’s original approvals.
4. 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 affected ANC's written recommendations.
5. As noted, ANC 7F submitted a report in support of the application, expressed the ANC’s desire for the Applicant to provide two-bedroom units in the project, and requested that 25 two-bedroom units in Building F-1 be designated as affordable and that neither Building F-1 or G-1 be designated as a “Senior Living Complex.”
6. With respect to providing a number of two-bedroom affordable units in both Buildings F-1 and G-1, the Applicant agreed to provide 25 two-bedroom affordable units in Building F-1 and 11 two-bedroom affordable units in Building G-1. With respect to the ANC’s request that neither building be designated as a “Senior Living

Complex,” the Applicant explained that its financing agreement would not permit such a restriction. As noted, the parties resolved the disagreement at the October 26, 2017 public meeting by agreeing that: a) the Applicant would set aside 25 two-bedroom units Building F-1 as affordable units, and (b) that the Applicant need not prohibit a “Senior Living Complex” for either building

7. ANC 6B did not submit any written document to the case record and did not participate in this proceeding. However, a representative of ANC 7F testified at the October 16th public meeting and confirmed that ANC 6B was notified about the Applicant’s modification of consequence application.
8. The Commission is required under § 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 (2001)), to give great weight to OP’s recommendations. The Commission has carefully considered the OP’s recommendation in support of the application and agrees that approval of the requested modification of consequence should be granted.

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 design review application approved in Z.C. Case No. 16-03, as modified by Z.C. Case No. 16-03A.

1. Conditions No. 5 of Z.C. Order No. 16-03 is hereby amended to read as follows:
 5. Building F-1 shall have a minimum of 75 affordable units, 38 of which shall be for households not exceeding 30% AMI and 37 of which shall be for households not exceeding 60% AMI. Twenty-five of the 75 affordable units in Building F-1 shall be two-bedroom units. These dedicated units shall be reserved at said affordability levels for 50 years, as required under the AWI Act. Upon the expiration of the 50-year period, 10% of the residential gross floor area of the building, including penthouse habitable space, shall be devoted to inclusionary zoning (“IZ”) units. Half of the IZ units shall be reserved for low-income households, or households not exceeding 50% AMI, and half shall be reserved for moderate-income households, or households not exceeding 80% AMI.
2. Condition No. 6 of Z.C. Order No. 16-03 is hereby amended to read as follows:
 6. Building G-1 shall have a minimum of 31 affordable units, 15 of which shall be for households not exceeding 30% AMI and 16 of which shall be for households not exceeding 60% AMI. These dedicated units shall be reserved at said affordability levels for 50 years, as required under the AWI Act. Upon the expiration of the 50-year period, 10% of the residential gross floor area of the building, including penthouse habitable space, shall be devoted to

inclusionary zoning (“IZ”) units. Half of the IZ units shall be reserved for low-income households, or households not exceeding 50% AMI, and half shall be reserved for moderate-income households, or households not exceeding 80% AMI.

3. The conditions in Z.C. Order Nos. 16-03 and 16-3A remain unchanged except as described above.


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.

At its public meeting of October 16, 2017, upon the motion of Vice Chairman Miller, as seconded by Chairman Hood, the Zoning Commission **APPROVED** the application 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 August 24, 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