

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-06B
Z.C. Case No. 16-06B
Jemal's Lazriv Water, LLC
(Design Review Modification of Consequence @ Square 666, Lot 15)
October 22, 2018

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on October 22, 2018. At that meeting, the Commission approved the application of Jemal's Lazriv Water, LLC ("Applicant") for a modification of consequence to a project first approved by Commission pursuant to the Capitol Gateway Overlay District design review provisions of the 1958 Zoning Regulations of the District of Columbia, Title 11 of the District of Columbia Municipal Regulations ("DCMR"), and subsequently approved as a modification of significance under the 2016 Zoning Regulations. The property that is the subject of this application is located at 1900 Half Street, S.W. (Square 666, Lot 15) ("Property"). The modification request was made pursuant to 11-Z DCMR § 703.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. The Property is located in the southwest quadrant of the District and is bounded by T Street to the north, the Anacostia River to the east, U Street to the south, and Water Street and Half Street to the west. The Property is the only lot in Square 666 and has an angled trapezoidal shape with a total land area of approximately 110,988 square feet. The Property is zoned CG-5.
2. The Property is presently improved with an existing and mostly vacant nine-story office building that was constructed circa 1976. The existing building has a height of 90 feet and approximately 665,928 square feet of gross floor area with a density of 6.0 floor area ratio ("FAR"). On-site parking for 691 vehicles is located within the building, and exterior on-site loading is located on the Property to the north of the building. The building was originally constructed for use by the General Services Administration for federal occupancy and was used as an office building for several decades.
3. Pursuant to Z.C. Order No. 16-06, dated July 7, 2016, and effective on August 26, 2016, the Commission approved a design review application submitted under the then-applicable Capitol Gateway Overlay District design review provisions of the 1958 Zoning

Regulations. The application proposed to renovate and adaptively reuse the existing building on the Property into a mixed-use project comprised of residential and retail uses. The approval included a variance from the maximum building height requirements, a variance from the loading requirements, and special exception relief to provide multiple penthouses at multiple heights and penthouses that do not comply with the setback requirements from the open court walls.

4. Pursuant to Z.C. Order No. 16-06A, dated January 29, 2018, and effective on May 11, 2018, the Commission approved a modification of significance to Z.C. Order No. 16-06, such that the existing building would be renovated to include approximately 468,647 square feet of total gross floor area (4.22 FAR), of which approximately 406,270 square feet of gross floor area was devoted to residential use (415 dwelling units, plus or minus 10%) and approximately 16,542 square feet of gross floor area was devoted to retail use ("Approved Project"). The Approved Project removed approximately 197,281 square feet of gross floor area (1.78 FAR) from the existing building to create a large river-facing courtyard, maintained the Property's existing lot occupancy of 63.6%, and included approximately 246 vehicle parking spaces in two levels of parking.

MODIFICATION OF CONSEQUENCE

5. By letter dated August 7, 2018, and pursuant to 11-Z DCMR § 703, the Applicant submitted a request for a modification of consequence to make certain modifications to the Approved Project's design and massing, to increase the number of residential units and parking spaces, and to make minor changes to the landscape design of the riverwalk on the east side of the Property adjacent to the Anacostia River. (Exhibit ["Ex."] 1.)
6. Specifically, the Applicant requested approval to increase the approved total gross floor area to approximately 502,395 square feet (4.53 FAR); increase the approved number of residential units to 453; and increase the approved number of parking spaces to 280. The modifications also included removing outdoor terraces for some of the residential units, separating the previously-approved courtyard space into two individual courtyards, reducing the size of the penthouse amenity space and increasing the size of the exterior pool deck, and making several other overall changes to the building's architectural design and massing ("Modified Project"). The Applicant also proposed to increase the total number of affordable housing units in the building from 10 units to 11 units to maintain the approximate proportionality of market rate to affordable units. However, the Commission is not making the provision of affordable housing a condition of this order for the reasons stated in Z.C. Order No. 16-06, Finding of Fact No. 62 and Conclusion of Law No. 8 and Z.C. Order No. 16-06A, Conclusion of Law No. 6.
7. The Modified Project does not incorporate any changes to the layout of the bicycle and pedestrian paths within the riverwalk. However, to the east of the building along the riverwalk, the Modified Project eliminates the patios for individual units and replaces them with an approximately eight-foot-wide planting area and a new set of stairs that provide direct access into the building. The plant material palette for the proposed landscaped area

includes the ornamental grasses and small trees as an extension of the adjacent (approved) planting areas. The Modified Project also includes new handicapped accessible ramps to the building's south entrance to comply with ADA and Building Code requirements.

8. Based on the foregoing, the Applicant requested to modify the language of Decision No. 2 of Z.C. Order No. 16-06A, which relates to the approved architectural drawings. Decision No. 2 states the following:
 2. The project shall be built in accordance with the architectural drawings submitted in the record of Z.C. Case No. 16-06, dated June 20, 2016 (Ex. 29A1-29A3), as modified by the architectural drawings submitted in the record of Z.C. Case No. 16-06A, dated October 13, 2017 (Ex. 8A1-8A2), as further modified by the Riverwalk Plan shown in the Applicant's PowerPoint presentation (Ex. 15, p. 11 [Sheet 43]), and as modified by the guidelines, conditions, and standards below.
9. The Applicant requested to modify the above-quoted language to reference updated architectural drawings submitted in this modification application as follows:
 2. The project shall be built in accordance with the architectural drawings submitted in the record of Z.C. Case No. 16-06, dated June 20, 2016 (Ex. 29A1-29A3), as modified by the architectural drawings submitted in the record of Z.C. Case No. 16-06B, dated August 6, 2018 (Ex. 1E1-1E3), and as modified by the guidelines, conditions, and standards below.
10. In satisfaction of 11-Z DCMR § 703.13, the Applicant provided a Certificate of Service, which noted that Advisory Neighborhood Commission ("ANC") 6D, the only party to the original proceeding, was served with the application. (Ex. 1, p. 5.)
11. By report dated September 7, 2018, the Office of Planning ("OP") indicated its concurrence with the Applicant's submission that the proposed refinements are a modification of consequence because they include the redesign and relocation of architectural elements and open spaces. (Ex. 4.) The OP report also recommended that the proposed modifications be approved.
12. At the Commission's September 17, 2018, public meeting, the Commission determined that the application was properly submitted as 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. In accordance with 11-Z DCMR § 703.17(c)(2), the Commission established a timeframe for the ANC to file a response to the application, and for the Applicant to respond thereto; and scheduled the application for deliberations.
13. By letter dated September 19, 2018, ANC 6D submitted a letter indicating that at its regularly scheduled and properly noticed public business meeting on September 10, 2018, with a quorum being present, the ANC voted 6-0-0 to withhold support of the application.

(Ex. 5.) The ANC's reasons were in part based on the reasons stated in Z.C. Case No. 16-06A: (i) the reduction of space devoted to retail; and (ii) the requests to allow a 10% reduction or addition to residential units and parking spaces without further approval by any Commission. The ANC report also opposed the following changes requested in the present case: (i) the removal of the setbacks/terraces facing the Anacostia River on the 7th and 9th floors of the building and the replacement of the terraces with units; (ii) the removal of the center wing setback from the east façade and the resultant alignment of the center wing with the north and south wings; and (iii) the elimination of the recessed unit balconies in the center wing facing the Anacostia River. The ANC also noted that it was not supportive of the reduction in square footage devoted to two-bedroom units or the increase in the quantity of one-bedroom and studio units while decreasing their average square footage. Finally, the ANC report requested that the Applicant provide additional affordable units in the Modified Project.

14. By letter dated October 15, 2018, the Applicant submitted a response to the ANC report. (Ex. 6.) With respect to the first two concerns raised by the ANC, the Applicant indicated that the Commission had already approved the reduction in retail space and the 10% flexibility for residential units and parking spaces. (*See* Z.C. Order No. 16-06A, Decision No. 7 and Findings of Fact No. 36 and 38.) Because the Modified Project did not propose any changes to the amount of retail space or additional flexibility as to the number of residential units or parking spaces, the Commission agrees with the Applicant that those issues have already been reviewed and resolved and declines to review them again.
15. With respect to the ANC's concerns with the modified building design, the Applicant's letter indicated that the Modified Project would (i) only eliminate outdoor river-facing terraces for 12 of the 415 approved residential units (2.8% of the units); (ii) separate the previously-approved river-facing courtyard at the second level into two separate courtyards but continue to maintain significant outdoor courtyard space; and (iii) only eliminate recessed unit balconies in the building's center wing facing the river for 14 of the 415 approved residential units (3.3% of the units). The Applicant's letter explained that the proposed modifications to the building design are a result of construction complications and significant costs associated with demolishing river-facing portions of the existing building. Creating the step-backs at the upper floors and constructing terraces on top of existing structural elements would create additional and unnecessary physical complications, such as providing ADA access to new terraces, incorporating additional waterproofing materials and techniques to ensure units below stay water tight, and establishing complex façade detailing. The Applicant's letter stated that the risks and significant cost associated with these additional components would not be needed if the project was constructed as proposed in Z.C. Case No. 16-06B without the additional demolition for the river-facing setbacks.
16. The Applicant's letter also stated that the proposed modifications to the building design would only be visible from the Anacostia River and would not be perceptible from any angle from the surrounding streets or riverwalk, such that the building would look identical to the design previously approved except when viewed from the river.

17. Finally, in response to the ANC report, the Applicant's letter noted that eliminating the setbacks and unit terraces would allow the Applicant to replace those spaces with 38 new residential units (a 9% increase in units), which is consistent with the District's goal of increasing the housing supply. As requested by the ANC, the Applicant also offered to add one new affordable housing unit to the building (increased to a total of 11 units from the Applicant's original offer of providing 10 affordable units) in order to maintain the building's market-rate-to-affordable-unit ratio. However, as previously stated by this Commission, the project is not required to provide any affordable units and therefore specifically does not impose an affordable housing requirement or condition as part of this Order. The Applicant's letter also noted that the ANC's concern with reducing the average unit size was not applicable to the standards for design review or for modifications of consequence, and the Commission agrees with this conclusion.
18. At its October 22, 2018, public meeting, the Commission reviewed the ANC report and the Applicant's response thereto and deliberated on the overall application. The Commission agreed with the Applicant that the reduction in retail space and the 10% flexibility for residential units and parking spaces was already reviewed and decided by the Commission in Z.C. Order No. 16-06A and should not be revisited. Indeed, all of the flexibility granted in Z.C. Order Nos. 16-06 and 16-06A shall remain in effect. The Commission also found that the proposed design changes were based on legitimate concerns arising from construction complications and costs associated with adaptively reusing the existing building, and that therefore the proposed modifications to the building design were appropriate. The Commission also noted that the design modifications would be visible from the river only, and even then would not significantly reduce the aesthetic appearance of the building. As noted in Finding of Fact No. 17, the Commission concludes that requiring affordable housing units and/or reviewing the size of the residential units is outside of the Commission's authority in this case.
19. Based on the foregoing, at its October 22, 2018 public meeting the Commission voted to approve the Applicant's request for a modification of consequence.

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 described in this Order and shown on the architectural drawings included at Exhibit 1E are modifications of consequence and therefore can be granted without a public hearing.
3. The Commission concludes that the proposed modifications are consistent with the Commission's previous approval of the project. The Applicant only proposes a redesign and relocation of architectural elements and open spaces from the final design approved in Z.C. Order Nos. 16-06 and 16-06A. The Commission concludes that these modifications do not diminish or detract from the Commission's original approval.
4. 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 contained in the written report of the affected ANC. In this case, ANC 6D submitted a report indicating its vote to withhold support for the application based on a number of factors described in Finding of Fact No. 13. For the reasons set forth in Finding of Fact Nos. 14-18, the Commission finds the ANC's concerns to be unpersuasive.
5. 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 OP's recommendation in support of the application and agrees that approval of the requested modification of consequence should be granted.
6. 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 the application for a modification of consequence to the approved project located at 1900 Half Street, S.W. (Square 666, Lot 15), subject to the architectural drawings at Exhibit 1E. Condition No. 2 of Z.C. Order No. 16-06A shall be revised as follows:

2. The project shall be built in accordance with the architectural drawings submitted in the record of Z.C. Case No. 16-06, dated June 20, 2016 (Ex. 29A1-29A3), as modified by the architectural drawings submitted in the record of Z.C. Case No. 16-06B, dated August 6, 2018 (Ex. 1E), and as modified by the guidelines, conditions, and standards below.

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

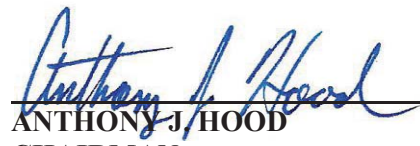
responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On October 22, 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 December 21, 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