

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 17-05A
Z.C. Case No. 17-05A
2100 2nd Street SW, LLC
(Design Review Modification of Consequence @ Square 613, Lot 10)
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 2100 2nd Street SW, LLC (“Applicant”) for a modification of consequence to Z.C. Order No. 17-05 (“Order”). The property that is the subject of this modification comprises Lot 10 in Square 613 (“Property”). The modification request was pursuant to § 703 of the Commission’s Rules of Practice and Procedure, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

Findings of Fact

1. Pursuant to Chapter 6 of Subtitle X of the Zoning Regulations, the Commission approved the design of a mixed-use building (“Project”) for the former headquarters of the United States Coast Guard at the Property. This approval is reflected in Z.C. Order No. 17-05. (Exhibit [“Ex.”] 1.)
2. On August 10, 2018, the Applicant submitted an application for a modification of consequence related to the redesign and relocation of architectural elements of the building and property area contained in the Order based on plan refinements during the permitting process. The application sought relief to make changes to: a) First Street, b) the rooftop terrace and façade, c) the south façade and terrace, d) building materials, and e) floodproofing plans. The Applicant included a set of plans depicting each of the following proposed modifications with the application: (Ex. 1, 1C.)¹
 - a. First Street: The modified design incorporated an elevated landing on 1st Street and relocated the pet relief area;

¹ The Applicant initially requested a modification regarding the treatment of the river’s edge, but withdrew that modification based on feedback from the Office of Planning and the Department of Energy and the Environment. (Ex. 5.)

- b. Rooftop Terrace and Façade: The pool was relocated and the modified design included a raised deck and associated trellis, and the penthouse façades were altered slightly;
 - c. South Façade and Terrace: Additional glass was incorporated into the south façade and a covered, open arcade walkway was provided in the southeast corner of the building to connect the restaurant terrace with 1st Street. Modifications were also proposed to the terrace wall to reduce its visual presence and to the flooring of the dining terrace;
 - d. Materials: Nichiha products replaced the Trespa and Equitone products approved for the elevation materials. Additionally, panels at the Project and balcony materials were revised slightly; and
 - e. Flood Proofing: The Applicant proposed a different type of temporary flood barriers to floodproof the building instead of the approved aluminum flood planks, which included some revisions to plantings around the Property.
3. The Office of Planning (“OP”) submitted a report dated September 6, 2018, recommending approval of the modification of consequence as requested, and noted comments from the Department of Energy and Environment (“DOEE”) regarding the floodproofing plan. OP supported the modifications as they only change exterior components of the Project and not the overall Project massing and do not change the flexibility granted in the Order. (Ex. 4.)
 4. The Applicant submitted a response to OP’s report and an update withdrawing one request for modification. The Applicant noted that DOEE had approved the revised floodproofing plan as part of the Code Modification process. (Ex. 5.)
 5. Advisory Neighborhood Commission (“ANC”) 6D, the ANC in which the project is located, submitted a letter dated September 17, 2018, which indicated:

At a regularly scheduled and properly noticed public business meeting on September 10, 2018, with a quorum being present (a quorum being 4), Advisory Neighborhood Commission (ANC) 6D voted 6-0-0 to offer support with concerns and suggestions RE the Capitol Gateway Overlay District Design review ... relief sought by the application noted above.

...

We are concerned with any loss of retail area in this retail-starved area. In this case, approximately 1,414 square feet of retail is lost.
- (Ex. 6.)
6. The Commission, at its September 17, 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 no public hearing was necessary pursuant Subtitle Z § 703.1. The Commission was therefore required by Subtitle Z § 703.17(c)(2) to establish 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 application to respond thereto; and schedule the request for deliberations. Because the ANC was the only party to the original proceeding, and had filed its report as noted above, the Commission noted there was no need for a timeframe for parties to file a response to the Modification. The Commission set a timeframe for the Applicant to respond to the ANC's letter and to provide an update regarding DOEE's comments by October 9, 2018. The Commission scheduled the request for deliberations for October 22, 2018.

7. The Applicant submitted a response to the ANC's report and an update on DOEE's comments on October 9, 2018, providing a copy of the Code Modification for construction of a mixed-use building within the floodplain for the Project, approved by DOEE, and responding to the ANC's concerns regarding the revisions at the southeastern corner of the Project. The Applicant noted that while the revisions to the southeast corner to provide a covered walkway do minimally reduce the indoor retail square footage, such a loss is minor compared to the gains of the modification. Specifically, the covered walkway provides easier access to the planned restaurants along the southern terrace and creates an opportunity for outdoor seating for the tenant in the southeast corner. (Ex. 7.)
8. The Commission, at its October 22, 2018 public meeting, voted to approve the 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 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 refinement of plans as described above is a modification of consequence and therefore can be granted without a public hearing.

The Commission finds that the proposed modifications are consistent with the Commission's previous approval of the Project and the Order. The refinements are supported by OP and the affected ANC.

The Commission is required under section 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 recommendations. The Commission considered the OP report and, as explained in this decision, finds its recommendation to grant the applications persuasive.

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, which in this case is ANC 6D. To satisfy the 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. In this case, the affected ANC expressed concern over the with the loss of approximately 1,414 square feet of retail. The Commission agrees with the Applicant that the benefits of the covered walkway outweigh this relatively small loss of retail.

DECISION

The Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a modification of consequence to the design review project approved in Z.C. Case No. 17-05. The conditions in Z.C. Order No. 17-05 remain unchanged except as follows (deletions noted by ~~strike through~~ text and additions in **bold** and underline text):

1. The Project shall be built in accordance with the plans, including flood proofing plans, and elevations dated May 16, 2017, and marked as Exhibit 16A of the record **of Z.C. Case No. 17-05**, as modified by the drawings submitted as Exhibits 26A, 30A, and 34A **of the record of Z.C. Case No. 17-05**, and as modified by the guidelines, conditions, and standards **contained in the Z.C. Order No. 17-05, as amended by the plans submitted on August 10, 2018, marked as Exhibit 1C of the record of Z.C. Case No. 17-05A**.

3. The Applicant will have the following areas of flexibility:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - b. To provide a range in the number of residential units and vehicular parking spaces plus or minus 10%;
 - c. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim, such that the refinements do not substantially change the external configuration or appearance of the building;


- d. To continue coordination of the streetscape design and areas in public space with DDOT during the public space process; ~~and~~
- e. To modify the number and location of retail entrances based on the number of tenants ultimately secured for the retail space-; and
- f. To continue coordination of the floodproofing plans with DOEE during the permitting process.

On October 22, 2018 upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, 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 effective upon publication in the *D.C. Register*; that is on November 9, 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