

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 631B

Z.C. Case No. 62-19B

WASHREIT WATERGATE 600 OP, LP

(Minor Modification to PUD @ Square 8)

July 30, 2018

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on July 30, 2018. At the meeting, the Commission approved an application of WASHREIT WATERGATE 600 OP, LP (“Applicant”) for a minor modification to an approved planned unit development (“PUD”) for property located at 600 New Hampshire Avenue, N.W. (Lot 811 [part of Record Lot 19] in Square 8) (“Site”). Because the modification was deemed minor, a public hearing was not conducted. The Commission determined that the application was properly before it under the provisions of Subtitle Z § 703 and Subtitle C § 1504.3 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

FINDINGS OF FACT

1. Pursuant to Z.C. Order No. 62-19, dated July 17, 1962, the Commission approved the overall Watergate PUD as a mixed-use project to be developed in four stages with 1,300 residential units, 300 hotel rooms, 185,000 square feet of office space, 94,000 square feet of retail use, below-grade parking, and open space (“Watergate Project”).
2. Pursuant to BZA Appeal Nos. 7234 (approved in 1963), 7903 (approved in 1964), 8117 (approved in 1965), and 9303 (approved in 1968), the Board of Zoning Adjustment (“Board”) approved further processing for Stages I through IV, respectively, of the Watergate Project.
3. Pursuant to Z.C. Case No. 68-58, dated December 18, 1968, the Commission approved modifications to “Building 1” within Stage IV of the Watergate Project, which is the office building located at the Site (“Office Building”), to provide for the combination of residential and office uses, distributed vertically, with 325 residential units and 260,600 square feet of office use. The type of office use permitted in Z.C. Case No. 68-58 was “restricted to those types of office uses permitted in the SP District.” (See Finding of Fact No. 1.) Pursuant to BZA Appeal No. 9919, dated January 30, 1969, and effective on February 3, 1969, the Board approved further processing of Building 1 to be constructed in three sub-stages and also approved a reduction in the number of residential units in Building 1 from 325 to no less than 287. Pursuant to BZA Appeal No. 9919, dated March 24, 1970, effective on May 11, 1970, the Board approved a further reduction in residential units in Building 1 from 287 to 260 and

a reduction in the number of parking spaces from 580 to 551. Finally, pursuant to Z.C. Order No. 100 (Z.C. Case No. 72-23), dated November 15, 1974, the Commission approved an amendment to Z.C. Case No. 68-58 to expand the types of office uses permitted in the Office Building to include a variety of office uses not otherwise permitted in the SP Zone District.

4. Pursuant to Z.C. Order No. 125 (Z.C. Case No. 75-3), dated February 12, 1976, the Commission approved amendments to the types of office uses permitted within the Stage II Office Building.
5. Pursuant to Z.C. Order No. 631 (Z.C. Case No. 89-6M/62-19), dated September 11, 1989, and effective on November 3, 1989, the Commission approved a modification to the hotel portion of the Watergate Project to permit a 2,000-square-foot expansion to the hotel's health club. Pursuant to Z.C. Order No. 03-16, dated June 14, 2004, and effective on August 6, 2004, the Commission approved a conversion of the hotel into an apartment house use. The hotel was closed in 2007 pending redevelopment, but the conversion never occurred and the Commission's approval in Z.C. Order No. 03-16 expired. Pursuant to Z.C. Order No. 631A (Z.C. Case No. 62-19A), dated January 9, 2012, and effective on June 22, 2012, the Commission approved a minor modification to reopen the hotel and increase the number of hotel rooms to 355 rooms.
6. The Office Building located at the Site was originally constructed in the 1960s. The Applicant acquired the Office Building in April, 2017, at which point it began renovating and upgrading the building to ensure its continued position as a Class A office building. Improvements to the Office Building included renovating the lobby, modernizing the elevators, completing exterior coating repairs, and upgrading the interior tenant amenity spaces.
7. By letter dated June 13, 2018, the Applicant submitted an application to the Commission requesting a minor modification to the approved PUD to incorporate penthouse habitable space on the roof of the Office Building. (Exhibit ["Ex."] 1.) The habitable space would provide opportunities for tenants and their guests to have additional amenity space in the building while enjoying views towards the Kennedy Center and the Potomac River.
8. The application proposes the construction of approximately 1,700 square feet of new penthouse habitable space, with access from the existing elevator bank, as an expansion to the Office Building's existing penthouse. The penthouse habitable space has been designed to integrate with the original design of the Watergate Project and blend with the historic landmark by incorporating simple materials and complimentary curves and ellipses. The interior space will contain an open room designed to support the existing roof deck. The proposed construction also includes upgrading the existing penthouse to support current code design loads, provide for accessibility, and add restrooms to support the space.
9. The proposed penthouse heights and setbacks comply with the requirements of Subtitle C, Chapter 15. The penthouse will have a maximum height of 12 feet, four inches, which is within the maximum penthouse height permitted in the MU-2 zone, which is the zone in which the Office Building is located. (*See* 11-G DCMR § 303.2.) The penthouse will be set

back in excess of 1:1 from the edge of the roof upon which it sits in accordance with 11-C DCMR § 1502.1. In addition, a roof deck and guardrail will be added in the area adjacent to the penthouse habitable space, both of which will be set back in excess of the 1:1 requirement. The existing screenwalls, the independent stair tower, and the existing guard rail, all of which are contributing elements of the historic landmark, will not be modified; however, a small portion of low-rise screenwall will be removed and the equipment will be relocated behind existing screenwalls. This portion of the screenwall proposed to be relocated was constructed after the original construction of the Office Building and does not contribute to the historic landmark. There is no change to the parking or loading previously approved and provided for the PUD.

10. As a result of the proposed habitable space, the Applicant will make a contribution to the Housing Production Trust Fund in accordance with the formula contained in 11-C DCMR §§ 1505.13 through 1505.16, which will be equal to one-half of the assessed value of the proposed penthouse habitable space. The final amount of the total contribution will be determined no earlier than 30 days prior to the date of the building permit application to construct the penthouse habitable space. No less than one-half of the required total financial contribution will be made prior to the issuance of a building permit for construction of the penthouse habitable space, and the balance will be made prior to the issuance of a certificate of occupancy for the building's penthouse habitable space.
11. Pursuant 11-Z DCMR § 703.13, the Applicant was required to formally serve a copy of the application on all parties to the original proceeding at the same time that it filed the application with the Office of Zoning. In 1962, when the original PUD was approved, neither the Commission nor the Board had rules that allowed for parties in contested cases. That changed in 1972 when the Court of Appeals determined that the D.C. Administrative Procedure Act applied to the Commission and the Board. Consequently, the Applicant sent a copy of its request for consent calendar modification to Advisory Neighborhood Commission ("ANC") 2A, the ANC in which the PUD is located, and to the owners of the buildings within the Watergate Project, including: (i) the Boards of Directors of Watergate East, Inc., Watergate West, Inc., and Watergate South, Inc., all of which are the cooperative associations which own the three apartment buildings in the project; (ii) Watergate Hotel LLC, the owner of the hotel building; (iii) Watergate Office Fee Owner LLC, the owner of an office building; and (iv) Watergate Partners, LLC, the owner of the retail leasehold interest.
12. On May 16, 2018, the Applicant presented the application to ANC 2A at its regularly scheduled and duly noticed public meeting at which a quorum of commissioners was present. At that meeting, ANC 2A voted unanimously (7-0-0) to support the application subject to the Applicant entering into a written agreement with the ANC concerning the operation of the penthouse habitable space and adjacent outdoor roof deck. By letter dated June 20, 2018, ANC 2A indicated that following the May 16, 2018, public meeting the Applicant and the ANC were actively engaged in settlement negotiations but had not yet finalized the language for a settlement agreement. (Ex. 4.) The ANC therefore requested to reserve its right to file a formal response to the application after the expiration of the seven-day period established by 11-Z DCMR § 703.15.

13. By letter dated July 25, 2018, ANC 2A submitted a letter indicating that it had executed a settlement agreement with the Applicant and requesting that the following terms be incorporated as conditions of approval to the application and/or the Applicant recording a covenant in the Land Records of the District of Columbia against the Site that includes the following conditions: (Ex. 6.)
 - a. The penthouse space and roof deck shall be accessory to the Office Building and shall be used only by an owner or tenant, including the agents, employees, invitees, or guests of an owner or tenant, of the Office Building. The penthouse space and roof deck shall be used only for activities and events associated with or ancillary to the owner or tenant's use and in no event shall be used as a nightclub, bar, cocktail lounge, or restaurant, unless otherwise approved in accordance with 11-C DCMR § 1500.3(c);
 - b. The roof deck may be used and operated from 8:00 a.m. to 10:00 p.m. on Sunday through Thursday and from 8:00 a.m. to 11:00 p.m. on Friday and Saturday as well as on all Federal holidays; and
 - c. There shall be no amplified music played on the roof deck at any time. There may be amplified music played in the penthouse space provided that any windows and/or doors remain closed. Notwithstanding this condition, the penthouse space and roof deck shall otherwise be operated in full compliance with the noise ordinances of Title 20 of the District of Columbia Municipal Regulations.
14. On July 26, 2018, the Applicant submitted a letter agreeing to the ANC's conditions. (Ex. 7.)
15. The Office of Planning ("OP") reviewed the request for a minor modification. By report dated July 23, 2018, OP recommended approval of the minor modification. (Ex. 5.)
16. On July 30, 2018, at its regular monthly meeting, the Commission reviewed the application and granted approval of the requested minor modification to the approved PUD. The Commission determined that the ANC's conditions should be made conditions of the order with the exception for the portion of the first condition that limits who may use the space as opposed to what the space may be used for. Therefore, the phrase "shall be used only by an owner or tenant, including the agents, employees, invitees, or guests of an owner or tenant," is not included in the condition adopted herein, since it is not relevant to the mitigation of any adverse impacts of the use. (*See Nat'l Black Child Dev. Inst., Inc. v. D.C. Bd. of Zoning Adjustment*, 483 A.2d 687, 691 (D.C. 1984) (personal conditions impermissibly regulate the business conduct of the owner, rather than the use of his property, and are unlawful per se.))
17. Based on the foregoing, the Commission finds that the requested modifications are minor and that approval of the modifications is appropriate and not inconsistent with its approval of the original PUD.

CONCLUSIONS OF LAW

Pursuant to 11-Z DCMR § 703, the Zoning Commission is authorized to approve minor modifications to approved final orders and plans through a consent calendar procedure without a public hearing. Pursuant to 11-Z DCMR § 703.2, minor modifications are those modifications that do not change the material facts upon which the Commission based its original approval. In addition, 11-C DCMR § 1504.3 provides that a request to add penthouse habitable space to a building approved by the Commission as a PUD may be filed as a minor modification for placement on the Commission's consent calendar, provided that (a) the item shall not be placed on a consent calendar for a period of 30 days' minimum following the filing of the application; and (b) OP shall submit a report with recommendations a minimum of seven days in advance of the meeting.

The Commission concludes that the modifications described herein do not change the material facts upon which the Commission based its original approval, and that the proposed modifications are to add penthouse habitable space to a building previously approved as a PUD. Accordingly, the Commission finds that the request falls within the scope of a Minor Modification made pursuant to 11-Z DCMR § 703 and 11-C DCMR § 1504.3.

The Commission is required 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) to give great weight to the recommendations of OP. OP recommended approval of the application as a Minor Modification, and the Commission concurs in this recommendation.

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 2A submitted two reports indicating its vote in support of the application, subject to the Commission incorporating three conditions into the Order approving the application and/or the Applicant recording a covenant in the Land Records of the District of Columbia that includes the stated conditions. ANC 2A expressed issues and concerns that it believed could be addressed through the Commission's imposition of conditions, to which the Applicant agreed. However, one of these conditions included a restriction on who may use the penthouse space and roof deck, which for the reasons explained above would be unlawful to impose. With this one exception, the Commission will impose the requested conditions, and therefore the ANC's legally relevant issues and concerns have been addressed.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a minor modification to add penthouse habitable space to the building located at 600 New Hampshire Avenue, N.W., consistent with the architectural plans and elevations included in the record at Exhibit 1C, subject to the following conditions:

1. The penthouse space and roof deck shall be accessory to the Office Building and as such shall be used only for activities and events associated with or ancillary to the owner or tenant's use and in no event shall be used as a nightclub, bar, cocktail lounge, or restaurant, unless otherwise approved in accordance with 11-C DCMR § 1500.3(c);
2. The roof deck may be used and operated from 8:00 a.m. to 10:00 p.m. on Sunday through Thursday and from 8:00 a.m. to 11:00 p.m. on Friday and Saturday as well as on all Federal holidays; and
3. There shall be no amplified music played on the roof deck at any time. There may be amplified music played in the penthouse space provided that any windows and/or doors remain closed. Notwithstanding this condition, the penthouse space and roof deck shall otherwise be operated in full compliance with the noise ordinances of Title 20 of the District of Columbia Municipal Regulations

On July 30, 2018, upon the motion of Commissioner May as seconded by Chairman Hood, 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 G. May, Peter A. Shapiro, and Michael G. Turnbull).

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 September 14, 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