

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 85-16A
Z.C. Case No. 85-16A
CLPF-CC Pavilion, L.P.
(Modification of Consequence of PUD @ Square 1661, Lot 2006
[5335 Wisconsin Avenue, N.W.]
April 29, 2019

Pursuant to public notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public meeting on April 29, 2019, to consider the request of CLPF-CC Pavilion, L.P. (the “Applicant”) for a Modification of Consequence (the “Application”) of a second-stage planned unit development (“PUD”) for Lot 2006 in Square 1661 (the “Property”) approved by Z.C. Order No. 517, effective March 6, 1987, as modified by Z.C. Orders No. 517-A and 517-B (collectively, the “Order”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (the “Zoning Regulations,” to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **DENIES** the Application.

FINDINGS OF FACT

1. The Order approved a second-stage PUD and map amendment for the Property, which has a land area of approximately 95,676 square feet and is located at the northwest corner of Wisconsin Avenue and Military Road, N.W.
2. The PUD approved by the Order is deemed a “vested project” under the Zoning Regulations of 1958 under which the PUD was considered and approved and the Order issued (Subtitle A §§ 102.1 & 102.3). As such, any proposed modification of the PUD must conform with the current Zoning Regulations (Subtitle A § 102.4).
3. Condition 1 of Z.C. Order No. 517 required the construction and use of the Property to comply with specified plans in the record.¹

¹ Although the Interactive Zoning Information System (“IZIS”) digital record in Z.C. Case No. 85-16 states that Exhibit [“Ex.”] 23, the plans as subsequently modified and approved by Z.C. Order No. 85-16, was not uploaded due to the oversized format, a reduced version of the plans that were submitted with the original PUD application was included in the IZIS digital record as part of the preceding exhibit. (Applicant’s Pre-Hearing Submission in that case at Ex. 22A1, pp. 105-132.) Pages 116-123 label most of the square footage on the Metro, first, and second floors as “retail,” with the third through ninth floors labelled “office.” (Ex. 22A1.)

4. Condition 2 of Z.C. Order No. 517 established that the PUD was to be a mixed-use project with three components: hotel, general office, and retail.
5. Finding of Fact 18 in Z.C. Order No. 517 defined the PUD as including approximately 490,237 square feet, of which 112,070 square feet were to be dedicated to retail use and 217,830 square feet for office use, with the remainder for hotel use.
6. The Application requested approval to change Condition 2 of Z.C. Order No. 517 to authorize the reallocation of uses to substitute office uses for retail uses by adding a requirement that all ground floor, street frontage space, excluding entrances, be dedicated to retail use.
7. The Application identified the general area where it proposed to substitute office uses for the original retail uses but did not specify the changes in square footage from the specific figures stated in Finding of Fact 18 of Z.C. Order No. 517 (although the Application did refer to the 112,070 square feet of retail spaces stated in Finding of Fact 18 of Z.C. Order No. 517). (Ex. 1, p. 2.)
8. The Application did not include copies of the plans approved by Z.C. Order No. 517 or plans showing the current location of the three use components of the PUD that reflected the specific square footage allocated to the three use components in Finding of Fact 18 of Z.C. Order No. 517. Nor did the Application include any plans indicating where it proposed to locate the new office uses for which the modification of consequence was requested.

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make modifications of consequence to final orders and plans without a public hearing.
2. Subtitle Z § 703.3 defines a modification of consequence as “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.”
3. Subtitle Z § 703.4 lists “a change to a condition in the final order” as an example of a modification of consequence.
4. Subtitle Z § 703.5 defines a modification of significance as a modification “of greater significance than a modification of consequence” that therefore requires a separate application and public hearing.
5. Subtitle Z § 703.6 lists “a change in use” as an example of a modification of significance.
6. Subtitle Z § 703.17 authorizes the Commission to deny a request for a modification of consequence and direct the applicant to file an application for a modification of

significance as the appropriate category either on the basis of a single Commissioner's request or by a vote of the Commission as a whole.

7. The Commission concludes that the Application is properly classified as a modification of significance under Subtitle Z § 703, not a modification of consequence, because the requested change is not limited to Condition 2 of Z.C. Order No. 517, which would appear to fall under Subtitle Z § 703.4's example of a modification of consequence. Instead, the Commission concludes that the proposed modification is effectively a change of use for the square footage dedicated to retail uses under the PUD, which the Application seeks to convert to office uses. As such, the Commission concludes that the Application represented a change of greater significance than appropriate for a modification of consequence and so is properly classified as a modification of significance pursuant to Subtitle Z §§ 703.5 and 703.6.
8. The Commission therefore directs the Applicant to file an application for a modification of significance per Subtitle Z § 704, if it still desires to seek the relief requested in the Application.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law contained herein, the Zoning Commission for the District of Columbia took **FINAL ACTION** at its April 29, 2019, public meeting, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, to **DENY** 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 deny).

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on May 24, 2019.

BY 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