

GOVERNMENT OF THE DISTRICT OF COLUMBIA



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION NO. 21-20

Z.C. Case No. 21-20

Steuart Investment Company

(Design Review @ Square 662, Lot 801 and Square 662E, Lot 800)

February 24, 2022

Pursuant to notice, at its February 24, 2022 public meeting, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of Steuart Investment Company (“Applicant”) requesting the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), Zoning Regulations of 2016, to which all references are made unless otherwise specified):

- Design review approval pursuant to Subtitle K, Chapter 5 and Subtitle Z, Chapter 6, with flexibility from the side yard (Subtitle K § 504.9) and penthouse setback (Subtitle C § 1504.1) requirements and the prohibition against curb cuts on South Capitol Street for access to loading or parking (Subtitle K § 510.1(b)(4)); and
- Special exception relief pursuant to Subtitle C § 1506 from the penthouse single enclosure requirements (Subtitle C § 1503.1).

The relief was requested for Lot 801 in Square 662 and Lot 800 in Square 662E (“Property”) to construct a new mixed-use multi-family building with ground floor retail (“Project”) in the CG-4 zone. The Commission conducted the public hearing in accordance with Subtitle Z. For the reasons below, the Commission hereby **APPROVES** the application.

**FINDINGS OF FACT**

**I. BACKGROUND**

**PARTIES**

1. The following were automatically parties to this proceeding pursuant to Subtitle Z § 403.5:
  - The Applicant; and
  - Advisory Neighborhood Commission (“ANC”) 6D, in which the Property is located and so is an “affected ANC” per Subtitle Z § 101.8.
2. The Commission received no requests for party status.

## HEARING AND NOTICE

3. Pursuant to Subtitle Z § 301.6, the Applicant mailed a Notice of Intent to file the Application on May 24, 2021, to: (Ex. 3D.)
  - ANC 6D; and
  - Owners of property within 200 feet of the Property.
4. Pursuant to Subtitle Z § 402, on November 23, 2021 the Office of Zoning (“OZ”) sent notice of the January 24, 2022 public hearing to: (Ex. 5-6.)
  - The Applicant;
  - ANC 6D;
  - ANC 6D05 Single Member District Commissioner, whose district includes the Property;
  - The Office of the ANCs;
  - Ward 6 Councilmember, whose district includes the Property;
  - The Chair and At-Large members of the D.C. Council;
  - The Office of Planning (“OP”);
  - The District Department of Transportation (“DDOT”);
  - The Department of Consumer and Regulatory Affairs (“DCRA”);
  - The Office of Zoning Legal Division (“OZLD”);
  - The Department of Energy and the Environment (“DOEE”); and
  - Owners of property within 200 feet of the Property.
5. Pursuant to Subtitle Z § 402.1(a), OZ also published the public hearing notice in the December 3, 2021 *D.C. Register*. (Ex. 4.)
6. Pursuant to Subtitle Z §§ 402.8 and 402.9, the Applicant filed an affidavit supported by photos stating that on December 13, 2021, it had posted the required notice of the public hearing. (Ex. 8.)
7. Pursuant to Subtitle Z §§ 402.10, the Applicant filed an affidavit attesting that it had maintained the posting of the notice on the Property until January 18, 2022. (Ex. 16.)

## THE PROPERTY

8. The Property is located in the Buzzard Point neighborhood of Southwest D.C. and is bounded by Half Street, S.W. to the west, S Street, S.W. to the south, R Street, S.W. to the north, and South Capitol Street, to the east. The Property consists of approximately 126,124 square feet of land area and is currently improved with a concrete batching plant. The Property will be developed in two or more phases, with the first phase being the subject of this application. The portion of the Property associated with Phase 1 is approximately 55,300 square feet. (Ex. 3.)
9. To the south of the Property, across S Street, S.W., is a multi-family residential building with ground floor retail. To the west of the Property is mixed-use development that was reviewed and approved by the Zoning Commission in Case No. 16-02D and is known as

“Parcel B”. To the southeast of the Property is a concrete batching plant that is owned by Florida Rock Properties Inc., a development partner in the instant Project, which is anticipated to be redeveloped in the future. To the east of the Property is a parcel of land, also owned by the Applicant, that is currently used as a helipad but is anticipated to be redeveloped in the future. (Ex. 3.)

10. Entrances to the Navy Yard and Waterfront Metrorail stations are located within one (1) mile of the Property. The Property is also served by three (3) Metrobus routes and on a Circulator route. (Ex. 10A1.)

### **ZONING**

11. The Property is located in the CG-4 Zone. The CG Zones are intended to, among other things, “[a]ssure development with a mixture of residential and commercial uses, and a suitable height, bulk, and design of buildings as generally indicated in the Comprehensive Plan and recommended by planning studies of the area” and encourage a “variety of support and visitor-related uses, such as retail, service, entertainment, cultural, and hotel uses.” (Subtitle K § 500.1.) The CG-4 zone is intended to permit “medium- to high-density mixed-use development,” “encourage provision of active pedestrian-oriented streets with active ground-floor uses,” and “promote pedestrian safety by separating pedestrian and vehicular circulation patterns.” (Subtitle K § 504.1.)
12. The CG-4 Zone permits a maximum floor area ratio (“FAR”) of 8.2 inclusive of the Inclusionary Zoning and residential density bonuses, with a maximum FAR of 3.0 for nonresidential use. (Subtitle K § 504.3.) The CG-4 Zone permits a maximum height of 130 feet for projects that trigger the residential density bonus. (Subtitle K § 504.4.)

### **COMPREHENSIVE PLAN (TITLE 10-A OF THE DCMR, THE “PLAN”) AND OTHER RELEVANT PLANNING DOCUMENTS**

13. The Plan’s Future Land Use Map (“FLUM”) designates the Property as Mixed-Use High Density Residential / High Density Commercial, which allows for mixed office/retail buildings with an FAR above 6.0 and high density residential uses with a FAR above 4.0. Plan § 227.8, 227.13.
14. The Plan’s Generalized Policy Map (“GPM”) designates the Property as a “Neighborhood Enhancement Area”; such areas are “neighborhoods with substantial amounts of vacant and underutilized land.” New development in Neighborhood Enhancement Areas should “respond to the existing character” and “[n]ew housing [is] encouraged to improve the neighborhood.” New development must be consistent with the FLUM. Plan § 225.6, 225.7.
15. The Plan’s Lower Anacostia/Near Southwest Area Element includes the Property.
16. The Property is also subject to the Buzzard Point Vision Framework and Design Review Guide (“Buzzard Point Guide”).
17. The Property is not included in the area covered by the Southwest Neighborhood Small Area Plan.

## **II. THE APPLICATION**

### **THE PROJECT**

18. The Applicant proposed the Project to have: (Ex. 3, 3F, and 11A.)
- A maximum height of 130 feet plus a habitable penthouse;
  - Approximately 437,938 square feet of gross floor area (“GFA”), plus a habitable penthouse, for a total FAR of approximately 7.92 based on the lot area of Phase 1 and a FAR of approximately 3.47 based on the area of the Property;
  - Approximately 434 residential units. Eight percent (8%) of the residential gross floor area will be set aside for affordable units available to households with an annual income of than 60% or less of the Median Family Income (“MFI”), pursuant to Inclusionary Zoning requirements (“IZ Units”);
  - Approximately 17,495 square feet of retail use; and
  - Approximately 264 vehicular parking spaces, approximately 145 long-term bicycle parking spaces, and approximately 22 short-term bicycle parking spaces.

### **APPLICANT’S SUBMISSIONS**

19. In addition to the testimony at the public hearing, the Applicant made the following submissions to the record in support of the Application:
- The initial November 12, 2021, application and related materials requesting design review approval, special exception approval and related flexibility (Ex. 3-3G);
  - A December 22, 2021 Comprehensive Transportation Review (Ex. 10-10A, the “CTR”);
  - A January 4, 2022, supplemental pre-hearing submission (Ex. 11-11D, the “Pre-Hearing Submission”), which included a complete Plan analysis, a complete updated set of plans for the Project, summary of witness testimony and expert resumes, and requested flexibility language;
  - A January 21, 2022 hearing submission with the Applicant’s hearing presentation (Ex. 26A1-26A2, the “Hearing Submission”); and
  - A February 14, 2022, post-hearing submission (Ex. 30, the “Post-Hearing Submission”), which included an interim condition rendering for the northern building walls and further study of the amount of solar provided on the roof, as requested by the Commission.
  - Submitted on February 21, 2022, the Applicant’s proposed findings of fact and conclusions of law. (Ex. 31A.)

### **RELIEF REQUESTED**

20. The Applicant requested: (Ex. 3.)
- Design review approval of the Project, including the following flexibility (which is described in greater detail below) from the CG-4 Zone side yard requirements of Subtitle K § 504.9; penthouse setback requirements of Subtitle C § 1504.1, as an interim condition; and the restrictions against vehicular garage and loading entrances from South Capitol Street in Subtitle K § 510.1(b)(4);

- Side yard requirements of K § 504.9 - minimum side yard of 21.7 feet required; 15 feet proposed;
- Penthouse setback requirements of C § 1504.1 – 1:1 setback required; less than 1:1 proposed in the interim. Until future phases are constructed, the north side penthouse will be located on an exterior wall and require flexibility. Ultimately the penthouse will face a closed court to the north after future phases of construction are completed requiring no setback relief;
- Prohibition on vehicular garage and loading entrances/exits on South Capitol Street per K § 510.1(b)(4) – applicant proposes a private through alley between South Capitol Street on the east and Half Street on the west to provide a vehicular and pedestrian connection; and
- Special exception approval pursuant to Subtitle C § 1506 from the requirement under Subtitle C § 1503.1 to provide a single enclosure for penthouses.

21. The Applicant also requested the following flexibility for the final design of the Project: (Ex. 11C.)

- Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the plans approved by the Order;
- Exterior Materials – Color: To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the Order;
- Exterior Details – Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the plans approved by the order. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
- Retail Spaces. Retail storefronts, signage, and associated features and fixtures in public space are subject to change upon individual retailer modifications;
- Residential Units. To modify the number of residential units by  $\pm 10\%$  and to shift the distribution and location of the inclusionary units as the floor plans are refined so long as their location and distribution continues to meet the requirements of Subtitle C of the Zoning Regulations;
- Parking Layout: To make refinements to the approved vehicular and bicycle parking configuration, including layout and number of parking space  $\pm 10\%$ , so long as the number of parking spaces is at least the minimum number of spaces required by the Zoning Regulations;
- Streetscape Design: To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
- Signage: To vary the final design of the signage for the Project, subject to full compliance with applicable signage restrictions under the D.C. Building Code and within the general size and locations shown in the Plans;
- Sustainability: To vary the final features, means, and methods of achieving the required GAR and LEED certification, including modification to location or orientation and type

of green roof and paver areas as required to meet stormwater requirements and sustainability goals. The Applicant also seeks the flexibility to incorporate additional solar panels so long as their inclusion in the penthouse plan is consistent with penthouse requirements;

- Balconies: To make refinements to the location, number, and dimensions of exterior balconies, so long as the final design remains consistent with the design intent of the Commission's approval, as depicted in the Approved Plans, and the final number of balconies varies by no more than  $\pm 10\%$  from the number of balconies shown in the Approved Plans;
- Courtyards and Rooftop: To vary the configuration and layout of the exterior courtyards and rooftops, including the location and size of the rooftop pool, so long as the courtyards and rooftops continue to function in the manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained; and
- Interim Uses: To provide interim uses on the northern portion of the Property, the site of Phase 2, to activate the space. Examples of permitted interim uses include, but are not limited to, dog park, food and beverage services, and limited parking.

#### **APPLICANT'S JUSTIFICATION**

#### **CG Specific Design Review (Subtitle K § 512.3) & General Design Review Urban Design Criteria (Subtitle X § 604.7)**

22. CG Zone Purposes (K § 512.3(a)). The Project's height, density, and mix of residential and nonresidential uses advance the overall goals of the CG zones and are consistent with the Property's FLUM designation. The residential and retail uses are types of uses specifically called for in the CG zones and the Project will result in the removal of a use that is no longer consistent with the planning objectives for the Property. The Project will also use high-quality materials consistent with its location along the prominent South Capitol Street corridor. The massing of the Project frames the South Capitol Street monumental boulevard and views of the Anacostia River. Finally, the pedestrian and vehicular circulation are consistent with the goals for the Property. (Ex. 3, 12.)
23. Desired Use Mix (K § 512.3(b), X § 604.7(b)). The Project provides the multifamily residential and retail uses identified as desired uses in Subtitle K § 512.3(b). (Ex. 3, 12.)
24. Context with the Surrounding Neighborhood and Street Patterns (K § 512.3(c), X § 604.7(c)). The Project and its surrounding public space are consistent with the walkable street pattern anticipated for the Property and the area. Planning and zoning for the Property anticipate the Property to be redeveloped from its historical industrial use to a high-density, mixed-use building. The massing emphasizes the desired view corridors as well as pedestrian experiences that planning for the Property anticipated and desires (Ex. 3, 12.)
25. Minimize Pedestrian and Vehicular Conflicts (K § 512.3(d), X § 604.7(a) & (f)). The Project will replace an industrial use with heavy truck traffic with a mixed-use building with street-facing retail and residential uses. The pedestrian experience will be enhanced with wider sidewalks and vehicular access to the Project will be consolidated in a through

alley, reducing vehicular activity on adjacent streets. Pedestrian safety will be prioritized through the use of materials, bollards, curbless roadways and signage. (Ex. 3, 12.)

26. Minimize Unarticulated Blank Walls Adjacent to Public Spaces (K § 512.3(e), X § 604.7(a) & (d)). The building facades are highly articulated and differentiated at each elevation. At the ground level, the main facades provide a significant amount of glazing to allow visual communication between the public realm and the retail and residential uses. The building setbacks and inclusion of balconies provide visual interest and help break up the mass of the building as well as create depth. The northern façade will incorporate artistic murals during the interim period prior to construction of Phase 2 of the development. (Ex. 3, 12, 30.)
27. Minimize Environmental Impact (K § 512.3(f), X § 604.7(e)). The Project is designed to a minimum of LEED v.4 Gold and incorporates solar panels on the rooftop. The landscape design includes green roof and LID/bioretention facilities, as well as native species for the majority of landscape plantings. (Ex. 3, Ex. 12.)
28. Massing, Materials and Design Promote South Capitol Street as Monumental Boulevard (K § 512.6(a)). The Project is designed to frame the adjacent South Capitol Street right-of-way in a manner that is sensitive to its importance by way of façade articulation and honoring required setbacks along South Capitol Street, as well as streetscape improvements and plantings along the street. The Project maximizes both height and density. Phase 1 will have an effective FAR of 7.92, when calculated on the portion of the lot dedicated to Phase 1 and then, together with Phase 2, the multifamily building on the Property will achieve a FAR of approximately 8.1, thus utilizing bonus residential density provided in the CG zone district. (Ex. 3, Ex. 12.)
29. Massing, Access, and Service Areas Recognize Nearby Residential Neighborhood (K § 512.6(b)). The ground-floor retail use will support residents and visitors to the neighborhood. The private alley will support enhanced circulation through and around the site, which is significant given the limitations of the dead-end nature of the South Capitol Street right-of-way to the east. (Ex. 3, Ex. 12.)
30. View Analysis to Assess Openness of Views and Vistas (K § 512.6(c)). The Applicant's view analysis demonstrates that the Project will not detract from the views of the Capitol Dome and Nationals Park to the north and views of the Anacostia River to the east. (Ex. 3F at 45-46.)

#### **General Design Review (Subtitle X § 604)**

31. Comprehensive Plan and Buzzard Point Guide Consistency (X § 604.5). The Project is, on balance, not inconsistent with the Plan as a whole and the Guide, and in fact furthers many goals and policies of the Plan and Guide. Specifically:
  - *Maps*: The height, density, and mix of uses are consistent with the Property's FLUM and GPM designations. The Project has an effective FAR of 7.92 (as calculated based on the land area of Phase 1 and a height of 130 feet, which is consistent with the Property's mixed use high density residential and high density commercial designation

on the FLUM. The proposed conversion of the site from the existing industrial use to the proposed mixed-use multifamily residential building is consistent with the Property's designation as a Neighborhood Enhancement Area on the GPM.

- *Resilience Focus Area:* The Project is currently located within the 500-year floodplain but the Project will be constructed to be above the floodplain and will incorporate flood protection for the Property's below-grade parking.
- *Racial Equity Lens:* The Project will create new housing on a site that is currently occupied by an industrial use and will include affordable housing consistent with the District's Inclusionary Zoning program in a soon-to-be amenity-rich neighborhood without causing any direct displacement of residents or local businesses. The Project's ground-floor retail uses will provide opportunities for new jobs in Southwest D.C., including from construction jobs for the Project's development as well as full-time hourly and salaried employment. The Project will replace a use that is not otherwise consistent with surrounding residential uses.
- *District Elements:* The Project advances multiple elements of the Land Use, Transportation, Housing, Environmental, Urban Design, Infrastructure, and Implementation Elements. The Application is not at all inconsistent with the Land Use Element and to the extent it is inconsistent with certain goals of the other District Elements, such inconsistencies are modest and are outweighed by the Project's overall consistency with the Plan as a whole.
- *Area Element and Buzzard Point Guide:* The Project helps implement the Area Element's goals to develop Buzzard Point as a mixed-use, mixed-income neighborhood with parks, amenities, and resilient design. The Project also advances the five urban design principles of the Guide through thoughtful, resilient design, active street-level activation and connections.  
(Ex. 3, 11, 11B.)

32. Special Exception Criteria (X § 604.6). The Project satisfies both prongs of the special exception test as follows: (Ex. 3, 11A.)

- *Will Not Tend to Adversely Affect the Use of Neighboring Property.* The Project will revitalize a currently underutilized site with development that is much more consistent with the overall planning goals for the area, resulting in substantial benefits for the surrounding area. The proposed multifamily residential use and ground-floor retail will support a more vibrant community in Buzzard Point and foster the type of urban development that is appropriate for the neighborhood and the site.
- *In Harmony with the Zoning Regulations and Maps.* The Project furthers the goals of the CG zones as set forth in Subtitle K § 500.1 and is fully consistent with the objective of the CG-4 Zone to permit a mix of residential and commercial uses, with active ground-floor uses and promoting pedestrian safety. The Project will meet all applicable CG-4 development standards, including all setbacks required along South Capitol Street.

33. Urban Design Criteria (X § 604.7 & 604.8). In addition to the specific urban design criteria of the CG zone, the Project also advances the broader urban design criteria applicable to all design review cases, as discussed above, in a manner that is superior to matter-of-right design in all material respects. (Ex. 3, 11, 11A.)

### **Design Review Flexibility (Subtitle X § 603.1)**

34. Side Yard. The Applicant justified the requested flexibility from the CG-4 Zone requirement under Subtitle K § 504.9 to provide a 21.7-foot side yard. The Project provides the minimum 15-foot setback along South Capitol, which is the required minimum under Subtitle K § 510.1(b)(1) and to which the building wall is required to be constructed for at least 60% of the street-wall under Subtitle K § 510.1(b)(2). The CG Zone plan envisions a 15-foot setback established along South Capitol Street, and the requested side yard flexibility permits the Project to achieve this. (Ex. 3, 11A.)
35. Interim Penthouse Setback. The Applicant justified the requested flexibility from the penthouse setback requirements of Subtitle C § 1504.1 to permit the interim condition of the Phase 1 penthouse, which will face onto an open court to the north until the future phase(s) are constructed, at which point the penthouse will abut a closed court. Because the north side of the penthouse will ultimately face onto an interior closed court, the requested flexibility is consistent with the intent of the penthouse setback requirements to regulate the visibility of penthouses as seen from the public realm, and it will allow the Project to provide a more generous shared rooftop amenity space for the building's residents. (Ex. 3, 11A.)
36. Vehicular Access from South Capitol Street. The Applicant justified the requested flexibility from Subtitle K § 510.1(b)(4), which prohibits vehicular garage and loading entrances and exits on South Capitol Street. Here, the through alley on the north portion of Phase 1 will increase transportation porosity through the site and will allow parking and loading access for Phase 1 to be internalized on the site. The through alley will help address the challenges associated with the adjacent South Capitol right of way being separated from, and lacking a vehicular connection to, the traffic oval and main South Capitol Street thoroughfare to the north. The alley will draw vehicular traffic away from S Street to the south of the Property, furthering the goal of making S Street pedestrian-focused as it moves toward the South Capitol Street right of way. The through alley connection to South Capitol Street, thus, advances the goals of the Capitol Gateway design requirements to establish South Capitol Street as a monumental boulevard. (Ex. 3, 11A.)

### **Special Exception for Penthouse Single Enclosure Requirements (Subtitle C § 1506 and Subtitle X § 901.2)**

37. The Applicant requested special exception relief from the prohibition against mechanical space located within a separate egress stairwell enclosure under Subtitle C § 1503.1(b) in order to provide such mechanical space within the stairwell penthouse located on the east side of the building.
38. The Project satisfies all of the special exception criteria for relief from penthouse requirements under Subtitle C § 1506, any one of which if met would by itself justify the requested relief, and also satisfies the criteria under Subtitle X § 901.2:
  - *Will Not Tend to Adversely Affect the Use of Neighboring Property and in Harmony with the Zoning Regulations and Maps*. Relief from the single enclosure requirements for mechanical space is fully consistent with the purpose and intent of the Zoning

Regulations and Maps and will not result in any adverse effect on neighboring properties. Mechanical space is needed on the east side of the building roof in order to accommodate mechanical systems to support the east side of the building. Locating the required equipment within the separate enclosure for the east stairwell minimizes the impact on the South Capitol Street viewshed and on the availability of views looking east to the river.

- *Reasonable Effort to Comply with Required Setbacks.* This requirement is inapplicable as the proposed east stairwell and mechanical penthouse will comply with setback requirements.
- *Strict Application of the Penthouse Regulations Is Unduly Restrictive, Prohibitively Costly, Unreasonable or Inconsistent with Building Codes.* Requiring that the mechanical equipment serving the east side of the building be placed within the main penthouse structure would be counter to the purpose and intent of the penthouse regulations and of the CG zone design requirements, which are intended to limit the visibility of penthouses and to maximize the South Capitol Street view corridor. Locating the mechanical equipment at issue within the east stairwell enclosure will minimize the impact on the South Capitol Street viewshed and views from the penthouse amenity space toward the river.
- *Relief Results in a Better Design Without Appearing to Extend the Building Wall.* Permitting the mechanical equipment serving the east side of the building to be placed within the stairwell penthouse results in a better design that increases openness and enhances enjoyment of the views along South Capitol Street and toward the river. The stairwell penthouse complies with required setbacks, reduces visibility for the mechanical enclosure, and does not appear to extend the main building façade.
- *Relief Results in a Penthouse That Is Less Visually Intrusive.* Locating the mechanical equipment at issue within the stairwell penthouse will be less visually intrusive than requiring that the central penthouse be extended across the roof to the east side of the building in order to incorporate this equipment.
- *Operating Difficulties or Other Conditions Make Full Compliance Unduly Restrictive, Prohibitively Costly or Unreasonable.* The mechanical equipment located within the stairwell enclosure is necessary to serve the residential units on the east side of the building. Given the adjacency of South Capitol Street and the stated planning goals of emphasizing openness for the viewsheds both towards the Capitol Dome and toward the river, it would be unduly restrictive and unreasonable to require the central penthouse structure to be expanded rather than enclosing the needed equipment within the proposed modest stairwell structure.

(Ex. 3; Ex. 11A.)

### **III. RESPONSES TO THE APPLICATION**

#### **OP**

39. OP submitted a report dated January 14, 2022 (Ex. 12, “OP Report”) that recommended approval of the design review application, including the special exception relief for the mechanical space within the east stairwell penthouse and flexibility for the side yard, interim penthouse setback, and vehicular access on South Capitol Street. OP evaluated the

application against the general design review criteria set forth in Subtitle X § 601 through 604 as well as against the CG-specific design review criteria in Subtitle K § 512. OP also provided a detailed evaluation of the Project against the Plan, including through a racial equity lens, and concluded that the Project was not inconsistent with the Plan.

40. The OP Report included the following requests and recommendations:
  - a. That the Applicant confirm the material selected for the northern walls of Phase 1 that will be temporarily visible prior to the construction of future phases and indicate the support structure for the building cantilevers over the private alley;
  - b. That the Applicant commit to achieving LEED Gold for the Project and providing onsite renewable energy generation; and
  - c. That the Applicant consider locating two-bedroom IZ units on the exterior of the Project.
41. In response to OP's requests and recommendations, the Applicant provided the following:
  - a. At the hearing, the Applicant confirmed that the northern façade would consist of metal panel-clad façade and that the portions extending over the through alley would be supported by free-standing columns in the interim condition prior to construction of the future phases. In its post-hearing submission, the Applicant provided information regarding the mural proposal for the portions of the northern façade that will be temporarily exposed prior to construction of the future phases. (Tr. Jan. 24, 2022 at 30, 39; Ex. 30, 30A.)
  - b. At the hearing, the Applicant confirmed its commitment to achieving LEED v.4 Gold for the Project and that rooftop solar would be included on the Project's penthouse. In the Applicant's post-hearing submission, the Applicant confirmed that it would commit to providing a minimum of 1,600 square feet of roof area devoted to solar arrays and that it would commit to providing a green roof in conjunction with the solar arrays. (Tr. Jan. 24, 2022 at 12, 34; Ex. 30, 30B.)
  - c. At the hearing, the Applicant noted that it would move one of its two-bedroom IZ units to the exterior of the Project. (Tr. Jan. 24, 2022 at 34.)
42. At the hearing, OP testified in support of the Application and confirmed that the Applicant's responses had satisfactorily addressed OP's recommendations. (Tr. Jan. 24, 2022 at 71-72.)

## **DDOT**

43. DDOT submitted a report dated January 14, 2022 (Ex. 13, "DDOT Report") that indicated that it has no objection to approval of the design review application subject to Applicant implementing the Transportation Demand Management ("TDM") Plan as proposed in the Applicant's CTR (Ex. 10-10A), subject to the following revisions:
  - Specify in the residential TDM Plan that eight parking spaces will be designated for car-sharing and micro-mobility services;

- Remove “required by zoning” from the TDM condition requiring the installation of a Capital Bikeshare station with 12 bike stalls; and
  - If the Applicant is proposing any Electric Vehicle (“EV”) charging stations, include a bullet in the TDM stating the minimum amount, which DDOT recommended be six stations for the Project (1 per 50 spaces).
44. At the hearing, the Applicant confirmed that it agreed to the revisions DDOT requested to the TDM Plan, including providing six EV charging stations. (Tr. Jan. 24, 2022 at 12.)
45. At the hearing, DDOT testified in support of the Application and confirmed that the Applicant’s responses satisfactorily addressed DDOT’s recommendations. (Tr. Jan. 24, 2022 at 72-73.)

### ANC

46. ANC 6D submitted a report dated December 13, 2021 (Ex. 9, “ANC Report”) stating that, at a duly noticed public meeting on December 13, 2021, with a quorum present, ANC 6D voted to support the Application. The ANC Report listed the following issues and concerns:
- The ANC supports the Applicant’s proposal to provide a much-needed grocery store to the area (albeit not until Phase 2 of the project).
  - The ANC asserts that construction will eliminate one of the two concrete plants in Buzzard Point that have contributed substantially to “dust and air pollution inflicted on local residents, particularly the low-income African American community immediately north of the site with underlying health conditions that exacerbate their risk.”
  - The ANC also stated support for the design of the project including the height stating “[although at] a full height of 130’, the upper two floors are set back on the east side, which also adds to the lightness of the design, and pick up the gray panel color used in other portions of the façade, again adding visual interest to the design.”
  - The ANC expressed concern that the proposed alley design would attract frequent pedestrian traffic and that the proposed width of 30’ may be too small to facilitate both pedestrian traffic and loading access. The Applicant has proposed addressing this by restricting pedestrian traffic to a designated 6 foot lane using different surface material and strategically placed bollards to ensure that trucks will not be able to inadvertently back into the pedestrian lane. The ANC wants a condition in the final order and detailed drawings/specifications to ensure that these safety features are incorporated in the final alley design.
  - The ANC expressed concern that additional retail spaces (aside from the proposed grocery tenant) should prioritize neighborhood-serving amenities. The ANC is committed to continuing their dialogue with the Applicant to address this concern.
  - The ANC expressed concern over potential conflict with street parking and pedestrian demand on S Street during the period in which the existing concrete plant is still in operation. The ANC requests the Applicant take steps to manage this demand as long as trucks will still need to access the industrial site. (Ex. 9.)

47. ANC Commissioner Frederica Kramer, the Single Member District Representative for the Property, testified in support of the Application at the public hearing. (Tr. Jan. 24, 2022 at 76-82.)
48. On February 22, 2022, ANC 6D submitted a post-hearing response to the Applicant's Post-Hearing Submission that addressed the treatment of two blank walls on the northern façade of the building that will be created temporarily after the construction of the first building in Phase 1 of this project.

The report stated:

“ANC 6D has met with the Applicant and discussed options for the nature of the artwork itself and the process for identifying artists, and has offered the following recommendations to which the Applicant has agreed.

- Neither space will include digital or other electronic components.
- There will be no exterior lighting other than limited spotlighting that might typically illuminate artwork.
- The Applicant will give preference to artists who have direct connection to the Southwest community, either by currently residing or working in Southwest or having done a significant amount of artwork in Southwest.
- The Applicant will select content that either deals directly with the history and culture of Southwest or will complement the aesthetic of Southwest.

The Applicant has agreed to work with ANC 6D in its selection of professional assistance from organizations such as the Washington Project for the Arts, and to work jointly with ANC 6D in the selection of artists and subjects for each of the art spaces. The selection does not preclude multiple displays over the course of the exposed exhibit space. ANC 6D has been working very productively with the Applicant on these issues and looks forward to that relationship continuing, and for the conditions stated to be included in the Final Order.”

(Ex. 32.)

### **Letters in Opposition**

49. Ten residents of Southwest D.C. and SW DC Action submitted letters in opposition to the Application. The letters in opposition stated:
  - The Project does not include sufficient affordable housing, does not further racial equity, and that the Zoning Commission should deny the Application unless the Applicant agrees to set aside one-third of the units for “deeply affordable” units and one-third of the units for “workforce” units.

- Some of the letters mention D-zone design reviews, which are exempt from IZ, and state that the Commission should change that rule. The testimony also notes a recent request for the Commission to take emergency action to apply IZ to the D-zones.
- The testimony also mentions the Southwest Area Plan mandate that the area is “to remain an exemplary model of equity and inclusion.” (Ex. 14-15, 17-20, 22-25, 27-28.)

## CONCLUSIONS OF LAW

### AUTHORITY—DESIGN REVIEW

1. Pursuant to the authority granted by the Zoning Act, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a Capitol Gateway design review application consistent with the requirements of Subtitle K § 512, Subtitle X, Chapter 6, and Subtitle Z § 301.
2. Subtitle K § 512 requires design review approval from the Commission for development on properties abutting South Capitol Street, such as the Property.
3. Pursuant to Subtitle X § 600.1, the purpose of the design review process is to:
  - (a) *Allow for special projects to be approved by the Zoning Commission after a public hearing and a finding of no adverse impact;*
  - (b) *Recognize that some areas of the District of Columbia warrant special attention due to particular or unique characteristics of an area or project;*
  - (c) *Permit some projects to voluntarily submit themselves for design review under this chapter in exchange for flexibility because the project is superior in design but does not need extra density;*
  - (d) *Promote high-quality, contextual design; and*
  - (e) *Provide for flexibility in building bulk control, design and site placement without an increase in density or a map amendment.*
4. Subtitle X § 603.1 authorizes the Commission, as part of the design review process, to “grant relief from development standards for height, setbacks, lot occupancy, courts, and building transitions, as well as any of a specific zone ... [but] not ... other building development standards including FAR, Inclusionary Zoning, or Green Area Ratio.”
5. Subtitle X § 603.3 provides that “[e]xcept for height, the amount of relief is at the discretion of the Zoning Commission, provided that the relief is required to enable the applicant to meet all of the standards of Subtitle X § 604.”
6. Subtitle X § 603.4 provides that “[a]n application for a special exception or variance that would otherwise require the approval of the Board of Zoning Adjustment may be heard simultaneously with a Design Review application, and shall be subject to all applicable special exception criteria and variance standards . . . .”

## SPECIFIC CG DESIGN REVIEW (SUBTITLE K § 512.3)

7. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies the applicable design review requirements of Subtitle K §§ 512.3 as detailed below:

- ***Subtitle K § 512.3(a)*** – The Project will achieve the applicable objectives of the Capitol Gateway as defined in Subtitle K § 500.1 as follows:
  - ***K § 500.1(a)*** – The Project provides a mix of high-density residential and commercial uses in line with the Plan and the Guide.
  - ***K § 500.1(b)*** – The Project includes visitor-related retail uses.
  - ***K § 500.1(g)*** – The Project provides for the establishment of South Capitol Street as a monumental civic boulevard.  
(The remaining purposes of the CG zone are not applicable to the Property.)
- ***Subtitle K § 512.3(b)*** – The Project will help achieve the desired use mix by providing residential and retail uses including approximately 434 residential units as well as approximately 17,495 square feet of retail use.
- ***Subtitle K § 512.3(c)*** – The Project will be in context with high-density development encouraged along South Capitol Street in the CG-4 Zone. The Project will redevelop an underutilized site currently devoted to a concrete batching facility to provide mixed-use urban development consistent with planning for the area and will further the overall revitalization of the immediate vicinity consistent with the vision for South Capitol Street and Buzzard Point.
- ***Subtitle K § 512.3(d)*** – The Project will minimize conflict between vehicles and pedestrians by separating vehicular entrances from pedestrian entrances and incorporating design features to encourage pedestrian safety. Loading and parking will be provided from the through alley, which will significantly reduce the vehicular activity on the public streets abutting the Property and emphasize the pedestrian-friendly nature of the development.
- ***Subtitle K § 512.3(e)*** – The Project will minimize unarticulated blank walls adjacent to public spaces through highly articulated and differentiated on each elevation, thus eliminating unarticulated blank walls adjacent to public spaces. The façade articulation includes high-quality building materials, brick patterning and detail, and balconies. The façade complements elements of the surrounding area, including the newly-completed Frederick Douglass Memorial Bridge, and breaks up the mass of the building, creating depth and visual interest, and framing surrounding views and along the South Capitol Street and towards the riverfront.
- ***Subtitle K § 512.3(f)*** – The Project will minimize impact on the environment through a commitment to being certifiable at the LEED Gold level and through specific measures such as solar panels, green roof, curbside LID/bioretenion facilities, and incorporating native species for the majority of landscape plantings.

- **Subtitle K § 512.6(a)** – The Project incorporates massing, materials, and streetscape landscaping to further the establishment of South Capitol Street as a monumental civic boulevard. The Project is designed to frame the South Capitol Street right of way in a manner sensitive to its importance, which is achieved through facade articulation, building to a height of 130 feet, and honoring the required setback along the South Capitol Street side of the building, as well as streetscape improvements and plantings along the street.
- **Subtitle K § 512.6(b)** – The Project incorporates parking and loading access, and service areas that have been carefully designed with a residential development context in mind. The Project will include ground-floor retail uses to serve residents. The proposed through alley on the north side of the Phase 1 building will help address the challenges associated with the site’s positioning in relation to the traffic oval and will ensure safe access and circulation around the site and maintain orderly traffic patterns that minimize conflicts with pedestrians, including those coming to the site from the residential areas to the north.
- **Subtitle K § 512.6(c)** – The Application includes the required view analyses, which shows that the Project will positively contribute to the views north towards the Capitol and Nationals Park and views east towards the Anacostia River. Further, the Project is set back from South Capitol Street and S Street, which will allow a more expansive viewshed facing toward both the Capitol and the river.

**GENERAL DESIGN REVIEW CRITERIA (SUBTITLE X § 604)**

8. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies the applicable general design review requirements of Subtitle X § 604 as detailed below.
9. The Commission concludes that the Application complies with the general design review requirement of Subtitle X §§ 604.1 and 604.2 to comply with the specific design review requirements because the Application satisfies Subtitle K § 512.3 as discussed above.
10. The Commission concludes that the Application satisfies the requirement of Subtitle X § 604.5 to not be inconsistent with the Comprehensive Plan because the Project:
  - Includes a mix of residential and commercial uses at a height and density that is consistent with the Property’s Mixed Use High Density Residential / High Density Commercial and Neighborhood Enhancement Area designations on the FLUM and GPM;
  - Will be constructed to be above the 500-year floodplain in which the Property is currently located and will incorporate flood protection for the Property’s below-grade parking as appropriate given the Property’s location in a Resilience Focus Area;
  - Will create new housing on a site that is currently occupied by an industrial use and will include affordable housing consistent with the District’s Inclusionary Zoning program, which will increase housing opportunities and affordable housing opportunities in a soon-to-be amenity-rich neighborhood without causing any direct displacement of residents or local businesses, all of which also further racial equity;

- Is not inconsistent with relevant objectives of the Plan and Buzzard Point Guide as a mixed-use, mixed-income neighborhood with amenities and resilient design.
11. The Commission concludes that the Application satisfies requirement of Subtitle X § 604.6 to not tend to adversely affect the use of neighboring property and the general special exception criteria of Subtitle X, Chapter 9, as discussed below:
- **Subtitle X § 901.2(a)** – The building and its uses are, on the whole, consistent with the CG-4 Zone goals and requirements. Accordingly, the Project is in harmony with the Zoning Regulations and Maps.
  - **Subtitle X § 901.2(b)** – The design of the building and uses within the building fit well within the surrounding existing and planned uses and include ground-floor retail which will contribute positively to the broader Southwest and Buzzard Point neighborhoods. Accordingly, the Project will not adversely affect the use of neighboring property.
12. The Commission concludes that the Application satisfies the requirements of Subtitle X §§ 604.7 and 604.8 to be superior to matter-of-right construction, with respect to the Project’s creative massing, detailing, materials selection, and other design features, based on the following criteria:
- **Subtitle X § 604.7(a)** – The Project will encourage a vibrant and active pedestrian environment surrounding the Property, with setbacks along South Capitol Street and S Street to create generous pedestrian zones and highly articulated facades to establish a dynamic streetscape. Loading, service and vehicular traffic will be focused on the through alley, which will substantially reduce vehicular activity within the South Capitol Street right of way and S Street, further encouraging the pedestrian nature of adjacent public spaces moving toward the waterfront to the east.
  - **Subtitle X § 604.7(b)** – The Project represents part of the Applicant’s broader plan for the overall surrounding area, in which it owns several parcels it plans to develop. This long-term development plan includes significant public open spaces, for which the Applicant continues to develop conceptual designs in direct coordination with OP. The Project represents an initial step towards achieving these objectives for the area.
  - **Subtitle X § 604.7(c)** – The Project will further the promotion of the South Capitol Street corridor as a monumental boulevard by revitalizing an underutilized site and replacing the current industrial use, which is not compatible with this important civic avenue and viewshed, with a carefully designed building that will activate the pedestrian environment, support better access to the waterfront, and elevate the design character of the area.
  - **Subtitle X § 604.7(d)** – The Project emphasizes a pedestrian-oriented street presence and focuses the design of the lower level façades on creating a welcoming pedestrian environment with visual interest. The Project’s material and façade create a sense of depth and appropriately frame the views along South Capitol Street and toward the river.

- *Subtitle X § 604.7(e)* – The Project incorporates sustainable landscaping, including curbside LID/bioretenion features incorporated into the surrounding streetscape utilizing native species for the majority of plantings and green roof features.
  - *Subtitle X § 604.7(f)* – The Project is designed to facilitate connectivity through the site and to the surrounding community. The Project includes streetscape improvements to the adjacent public streets to enhance the pedestrian experience and increase mobility, and to the through alley across the Property to accommodate loading activity and parking access. The through alley will further facilitate the pedestrian-friendly nature of the surrounding public street network and minimize conflicts. The Project includes bicycle facilities within and adjacent to the building.
13. The Commission concludes that the requested design review flexibility pursuant to Subtitle X § 603 from the side yard requirements, penthouse setback requirements for the interim condition, and prohibition against vehicular access along South Capitol Street meets the standards of Subtitle X § 604. The requested side yard flexibility permits the Project to achieve the 15-foot setback envisioned in the CG zones for properties facing South Capitol Street. The requested penthouse setback flexibility is consistent with the intent of the setback requirements to regulate the visibility of penthouses as seen from the public realm, and it will allow the Project to provide a more generous shared rooftop amenity space for the building’s residents. The requested flexibility from the prohibition on vehicular entrances on South Capitol Street will allow the proposed through alley, which will increase transportation porosity through the site and allow parking and loading access for Phase 1 to be internalized on the site, thereby drawing vehicular traffic away from S Street, furthering the goal of making it pedestrian-focused moving toward the South Capitol Street right of way.
14. The Commission acknowledges that the Project is the first phase in the development of the Property and will create interim conditions that are not fully consistent with the Zoning Regulations, but that the final development on the Property will be consistent with the Zoning Regulations.

**AUTHORITY—SPECIAL EXCEPTION**

15. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl); *see also* Subtitle X § 901.2) authorizes the Commission to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Commission, the special exception:
- Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map;
  - Will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map; and
  - Complies with applicable specific conditions set forth in the Zoning Regulations.
16. For the relief requested by the Application, the “specific conditions” are those of Subtitle C § 1506.1.

17. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Commission's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Commission ordinarily must grant the application." *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

**SPECIAL EXCEPTION – PENTHOUSE SINGLE ENCLOSURE REQUIREMENTS (SUBTITLE C § 1506)**

18. Based on the case record and the Findings of Fact above, the Commission concludes that the Application's request for special exception relief to permit mechanical space within the separate east stairwell penthouse satisfies the special exception criteria as follows:
- ***Subtitle C § 1506.1(a) (encompassing Subtitle X § 901.2)*** – Relief from the single enclosure requirements for mechanical space is fully consistent with the purpose and intent of the Zoning Regulations and Maps and will not result in any adverse effect on neighboring properties. Mechanical space is needed on the east side of the building roof in order to accommodate mechanical systems to support this portion of the building. Locating the required equipment within the separate enclosure for the east stairwell minimizes the impact on the South Capitol Street viewshed and on the availability of views looking east to the river.
  - ***Subtitle C § 1506.1(b)*** – The requirement to demonstrate reasonable efforts to comply with setbacks is inapplicable in this case as the proposed east stairwell and mechanical penthouse will comply with setback requirements.
  - ***Subtitle C § 1506.1(c)(1)*** – Strict application of the single enclosure requirements in this case would be counter to the purpose and intent of the penthouse regulations and of the CG zone design requirements, which are intended to limit the visibility of penthouses and to maximize the South Capitol Street view corridor. Locating the mechanical equipment at issue within the east stairwell enclosure will minimize the impact on the South Capitol Street viewshed and views from the penthouse amenity space toward the river.
  - ***Subtitle C § 1506.1(c)(2)*** – Permitting the mechanical equipment serving the east side of the building to be placed within the stairwell penthouse results in a better design that increases openness and enhances enjoyment of the views along South Capitol Street and toward the river. The stairwell penthouse complies with required setbacks, reduces visibility for the mechanical enclosure, and does not appear to extend the main building façade.
  - ***Subtitle C § 1506.1(c)(3)*** – Locating the mechanical equipment at issue within the stairwell penthouse will be less visually intrusive than requiring that the central penthouse be extended across the roof to the east side of the building in order to incorporate this equipment.

- **Subtitle C § 1506.1(c)(4)** – Given the adjacency of South Capitol Street and the stated planning goals of emphasizing openness for the viewsheds both towards the Capitol Dome and toward the river, it would be unduly restrictive to require the central penthouse structure to be expanded to accommodate the mechanical equipment at issue rather than enclosing the needed equipment within the proposed modest stairwell structure, above the east portion of the building that the equipment will serve.

**“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP**

19. The Commission must give “great weight” to the recommendation of OP, pursuant to § 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 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016).)
20. The Commission finds OP’s evaluation of the Application as having satisfied the applicable design review requirements to be persuasive, concurs with OP that the Applicant has satisfactorily addressed OP’s recommendations, and concurs with OP’s recommendation to approve the Application.

**“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC**

21. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 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) (2012 Repl.) and Subtitle Z § 406.2. To satisfy this great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016). The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).
22. The Commission agrees with ANC 6D’s support for the Application, and responds to the issues and concerns expressed in the two ANC reports as follows:
  - ANC 6D stated it supported the Project because it will include a grocery store in a future phase of development, will eliminate a concrete plant that contributes to dust and air pollution, and because of its design.
    - The Commission concurs with this advice.
  - ANC 6D expressed concern regarding pedestrian safety in the alley, and requested that the Commission include a condition in this Order requiring the Applicant to provide a designated lane restricted to pedestrian traffic with additional safety measures.
    - This Order includes such a condition.

- ANC 6D expressed concern that the additional retail spaces in the Project (aside from the grocery store) include neighborhood serving retail, and that the ANC was satisfied with the Applicant’s pledge to continue their dialogue with the ANC on this issue.
  - The Commission believes the Applicant will do so in good faith and that this is sufficient under the circumstances.
- ANC 6D expressed concern over potential conflict between street parking and pedestrian demand on S Street while the concrete plant is still in operation.
  - The Commission believes the design of pedestrian measures in the Project, including the alley, is sufficient to address this concern.
- Finally, ANC 6D expressed several concerns about the proposed treatment of the interim northern façade of the Project after Phase 1 is built but Phase 2 is not complete. The ANC stated that it had reached an agreement with the Applicant, listed the terms of the agreement and stated that they believed they should be included as a condition in this Order.
  - This Order includes such a condition.

**LETTERS IN OPPOSITION**

23. The Commission reviewed and fully considered the letters in opposition submitted into the record, including statements that the Project does not include enough affordable housing, does not advance racial equity, and the request that the Project set aside one-third of the units as “deeply affordable” units and one-third of the units as “workforce” units.
24. However, as stated above, the Commission concludes that the Project satisfies the applicable standards for design review approval. The Commission reiterates that the Project will create new housing on a site that is currently occupied by an industrial use and will include affordable housing consistent with the District’s Inclusionary Zoning program without causing any direct displacement of residents or local businesses. The Project will also make the Property and area more resilient by raising the Project above the 500-year floodplain, in furtherance of the District’s resilience objectives for the Buzzard Point area. The Project will help achieve the vision set forth in the Plan’s Area Element and in the 2017 Buzzard Point Vision Framework and Design Review Guide, as has been thoroughly demonstrated in the Applicant’s submissions. Accordingly, the Commission finds unpersuasive the letters in opposition which request that the Application be denied primarily on the basis that the Project does not provide affordable housing significantly in excess of what is set forth under the Inclusionary Zoning program.
25. The Commission further concludes that the Project advances racial equity because it will create new housing and affordable housing on a site that is currently occupied by an industrial use that is not consistent with surrounding residential uses.

26. Finally, the Commission concludes that the comments related to the D-Zones and the Southwest Area Plan are not relevant to this Application because the Property is not located in a D-Zone or the area covered by the Southwest Area Plan.

### DECISION

Based on the case record, the testimony at the public hearing, and the above Findings of Fact and Conclusions of Law, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for the following relief for the Property:

- Design review approval pursuant to Subtitle K, Chapter 5, and Subtitle X, Chapter 6, with flexibility from the side yard requirements, penthouse setback requirements for the interim condition of the north building wall, and the prohibition on vehicular access on South Capitol Street; and
- Special exception from penthouse single enclosure requirements pursuant to Subtitle C § 1506 and Subtitle X § 901.2.

Said approval is subject to the following conditions, standards, and flexibility:

#### Project Development

1. The Project shall be built in accordance with the plans and elevations dated November 12, 2021 (Ex. 3F1-3F3), as updated by the plans dated January 4, 2022 (Ex. 11A1-11A3) as updated in Exhibit 26A, 30A, and 30B (collectively, the “**Final Plans**”), and with requested zoning flexibility, subject to the following areas of flexibility:
  - a. Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the plans approved by the Order;
  - b. Exterior Materials – Color: To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the Order;
  - c. Exterior Details – Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the plans approved by the order. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
  - d. Retail Spaces: Retail storefronts, signage, and associated features and fixtures in public space are subject to change upon individual retailer modifications;
  - e. Residential Units: To modify the number of residential units by  $\pm 10\%$  and to shift the distribution and location of the inclusionary units as the floor plans are refined so long as their location and distribution continues to meet the requirements of

Subtitle C of the Zoning Regulations, provided the Applicant provides at least one of its two-bedroom IZ units on the exterior wall of the Project;

- f. Parking Layout: To make refinements to the approved vehicular and bicycle parking configuration, including layout and number of parking space  $\pm 10\%$ , so long as the number of parking spaces is at least the minimum number of spaces required by the Zoning Regulations;
  - g. Streetscape Design: To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
  - h. Signage: To vary the final design of the signage for the Project, subject to full compliance with applicable signage restrictions under the D.C. Building Code and within the general size and locations shown in the Plans;
  - i. Sustainability: To vary the final features, means, and methods of achieving the required GAR and LEED certification, including modification to location or orientation and type of green roof and paver areas as required to meet stormwater requirements and sustainability goals. The Applicant also seeks the flexibility to incorporate additional solar panels so long as their inclusion in the penthouse plan is consistent with penthouse requirements;
  - j. Balconies: To make refinements to the location, number, and dimensions of exterior balconies, so long as the final design remains consistent with the design intent of the Commission's approval, as depicted in the Approved Plans, and the final number of balconies varies by no more than  $\pm 10\%$  from the number of balconies shown in the Approved Plans;
  - k. Courtyards and Rooftop: To vary the configuration and layout of the exterior courtyards and rooftops, including the location and size of the rooftop pool, so long as the courtyards and rooftops continue to function in the manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained; and
  - l. Interim Uses: To provide interim uses on the northern portion of the Property, the site of Phase 2, to activate the space. Examples of permitted interim uses include, but are not limited to, dog park, food and beverage services, and limited parking.
2. **LEED**. The Project shall be designed to achieve LEED Gold v.4 certification, provided that the Applicant shall have the flexibility to vary the approved sustainable features of the Project as long as the total number of LEED points achievable for the Project does not decrease below the minimum required for the foregoing LEED standard. Prior to the issuance of a building permit, the Applicant shall submit evidence from its architect certifying compliance with this condition.
3. **Rooftop Solar**. The Project shall set aside a minimum of 1,600 square feet of roof area for solar arrays.

### **Pedestrian safety measures in alley**

4. **For the life of the Project**, the Applicant shall provide the alley improvements shown on Exhibit 11A3, sheet L12.

### **Location of one- of the two-bedroom IZ Units**

5. **For the life of the Project**, the Applicant shall provide one- of the two-bedroom IZ units located on the exterior wall of the Project.

### **Treatment of interim façade**

6. **In the interim period between construction of the Project and the development of Phase 2, which will connect with the Project**, the Applicant shall provide painted murals on the majority of the interim open façades, as depicted at Exhibit 30A. There shall be no digital or electronic components. There will be no exterior lighting other than limited spotlighting that might typically illuminate artwork. In selecting the artists, the Applicant shall give preference to artists who have a direct connection to the Southwest community, either by currently residing or working in Southwest or having done a significant amount of artwork in Southwest. In selecting the content of the murals, the Applicant will select content that either deals directly with the history and culture of Southwest or will complement the aesthetic of Southwest.

### **Transportation Management Measures**

7. **For the life of the Project**, the Applicant shall adhere to the following Transportation Demand Management plan measures:

#### *Site-Wide TDM*

- a. Unbundle the cost of vehicle parking from the purchase or lease agreement for each residential or retail unit (or the entire building) and charge a minimum rate based on the average market rate within a quarter mile. Free parking, validation, or discounted rates will not be offered to Phase 1 retail customers;
- b. Identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement;
- c. Provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year;
- d. Transportation Coordinators shall develop, distribute, and market various transportation alternatives and options to the residents and employees, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications;

- e. Transportation Coordinators shall receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;
- f. Transportation Coordinator shall subscribe to the applicable goDCgo newsletters;
- g. Post all TDM commitments on website, publicize availability, and allow the public to see what commitments have been promised;
- h. Long-term bicycle storage rooms shall accommodate nontraditional sized bikes including cargo, tandem, and kids bikes;
- i. Provide residents and employees who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOC) or other comparable service if MWCOC does not offer this in the future;
- j. Following the issuance of a certificate of occupancy for the Project, the Transportation Coordinator shall submit documentation from DCRA summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case;
- k. Following the issuance of a certificate of occupancy for the Project, the Transportation Coordinator shall submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order;
- l. Short- and long-term bicycle parking spaces shall meet ZR16 requirements, and long-term bicycle parking will be provided free of charge to residents;
- m. Install a Transportation Information Center Display (electronic screen) within the lobby containing information related to local transportation alternatives. At a minimum, the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
- n. Designate two parking spaces for vans to be used by District residents who vanpool to work;
- o. Provide a bicycle repair station in each long-term bicycle parking storage room;
- p. Install one Capital Bikeshare station with a minimum of 12 bike stalls, located on site or at an off-site location within the Ward at a location to be determined by DDOT;

- q. Install six EV charging parking stations in the parking for the Project;

*Residential TDM Plan*

- r. Provide welcome packets to all new residents that at a minimum, will include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map;
- s. Provide a free SmarTrip card to every new resident and a complimentary Capital Bikeshare coupon good for one ride;
- t. Provide an annual CaBi membership to each resident for the first year after the building opens;
- u. Provide one collapsible shopping cart (utility cart) for every 50 residential units, for a total of nine, to encourage residents to walk to the grocery shopping and run errands;
- v. Designate eight parking spaces in the vehicle parking garage for car-sharing and micro-mobility services to use with right of first refusal. If an agreement has not been reached with one of these services to occupy all of the dedicated spaces, the Applicant will provide one additional year of membership to Capital Bikeshare for each resident after the building has opened;

*Retail TDM Plan*

- w. Post “getting here” information in a visible and prominent location on retailers’ websites with a focus on non-automotive travel modes. Also, links will be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for patrons discouraging parking on-street in Residential Permit Parking (RPP) zones;
- x. Transportation Coordinator shall demonstrate to goDCgo that retail tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law and participate in one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future;
- y. Provide a free SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to each new employee;
- z. Provide an annual CaBi membership to each employee for the first year after the building opens;
- aa. Participate in the Capital Bikeshare Corporate Membership program and offer discounted annual memberships to employees; and

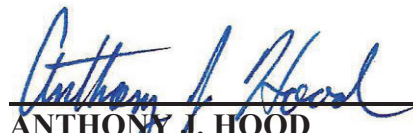
- bb. Coordinate with ANC on a wayfinding plan along walking routes to the property from the Metrorail station


**General**

- 8. This Application approval shall be valid for a period of two years from the effective date of this Order. Within such time, an application for building permit must be filed as specified in Subtitle Z §702.2. Construction must begin within three years after the effective date of this Order. (Subtitle Z §702.3.)

**VOTE (February 24, 2022):**      **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Joseph S. Imamura to **APPROVE**, 3<sup>rd</sup> Mayoral Appointee position vacant).

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 21-20 shall become final and effective upon publication in the *DC Register*; that is, on April 8, 2022.

  
\_\_\_\_\_  
**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
\_\_\_\_\_  
**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

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 IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 21-20A**  
**Z.C. Case No. 21-20A**  
**Steuart Investment Company**  
**(Modification of Consequence of Approved Design Review**  
**@ Square 662, Lot 16)**  
**September 14, 2023**

Pursuant to notice, at its September 14, 2023 public meeting, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of Steuart Investment Company (“Applicant”) for a Modification of Consequence to an approved Design Review granted in Z.C. Order No. 21-20, effective April 8, 2022 (the “Original Order”), for a mixed-use building with ground floor retail use consisting of approximately 440,000 square feet of gross floor area (the “Project”) located at Square 662, Lot 16<sup>1</sup> (the “Property”).

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 (Zoning Regulations of 2016 [the “Zoning Regulations”]), to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**Prior Approval**

1. Pursuant to the Original Order, the Commission granted Design Review approval to construct the Project with approximately 434 residential units and approximately 17,495 square feet of ground floor retail use in the Buzzard Point neighborhood at the corner of S Street S.W., Half Street S.W., and the South Capitol Street right-of-way.
2. The Property is located in the CG-4 (Capitol Gateway) zone and abuts South Capitol Street; therefore, pursuant to the Commission’s authority under Subtitle K § 512.1(d), the Project was reviewed and approved in accordance with the CG Zone Design Review criteria of Subtitle K, Chapter 5 and the general Design Review criteria of Subtitle X, Chapter 6.

**Parties and Notice**

3. Advisory Neighborhood Commission (“ANC”) 6D, in which the Property is located, is an “affected ANC” and automatically a party to the Application. Aside from the Applicant

---

<sup>1</sup> When Z.C. Case No. 21-20 was approved, the Property was designated as Lot 801 in Square 662; and Lot 800 in Square 662E. The Property has since been re-subdivided and is now designated as Lot 16 (encompassing Assessment and Taxation Lots 802 and 803) in Square 662.

and ANC 6D, there were no other parties to the original proceeding for Z.C. Case No. 21-20.

4. On May 26, 2023, the Applicant served the Application on ANC 6D, the D.C. Office of Planning (“OP”), and the District Department of Transportation (“DDOT”) as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2.)

### **The Application**

5. On May 26, 2023, the Applicant filed the Application requesting a Modification of Consequence to make the following changes to the approved plans for the Project:

- Penthouse Changes: The Applicant proposes to extend the Project’s penthouse structure by an additional 54 feet to the east, resulting in an increase of the main penthouse area from approximately 12,477 square feet to approximately 13,230 square feet. The expansion is the result of relocating the mechanical equipment from its location adjacent to the stairs in the northeast corner of the rooftop to the main penthouse, which also results in some minor refinements to the penthouse façade. In addition, the Applicant proposes to relocate the pool and accompanying seating area (as permitted pursuant to the flexibility granted in the Original Order), which narrows the overall massing of the penthouse structure. The Applicant states that the changes will better utilize the rooftop space to maximize recreation area for tenants as well as maximize views of the resources in the vicinity of the building;
- S Street Streetscape Changes: The Applicant proposes to modify the ground floor façade along S Street and incorporate glazing that blends the interior and exterior spaces and a structured canopy in the outdoor area. The Applicant also proposes to add an entry that projects from the building with a grey frame and canopy comprised of dark grey metal panel and glass as well as an additional projection into the setback to create a bay in the anticipated residential co-working space. These modifications result in a reduction of approximately 298 square feet in the total ground floor area; and
- Private Alley Changes: The Applicant proposes to increase the glazing at the ground floor facing the private alley on the north side of the Project to make it feel more like a primary façade and create a visual connection with the activity occurring inside. Once all phases of the development are constructed, the façade will face an interior courtyard. The Applicant proposes to modify the ground floor circulation plan by relocating the loading entry and shifting the entrance to the parking garage, which the Applicant states will improve pedestrian safety and provide greater opportunity to create visual points of interest. The Applicant also proposes to update the material for the vehicular pathway from a rough cobble paver to a raked concrete finish.

(Ex. 2, 2C1-2C4.)

6. The Application states that the requested modifications are consistent with the Zoning Regulations’ description of a Modification of Consequence under Subtitle Z § 703.4, examples of which include “a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission.” (Ex. 2.)

7. The Application states that the Project continues to be consistent with the CG Zone Design Review criteria of Subtitle K, Chapter 5 and general Design Review criteria of Subtitle X,

Chapter 6 by allowing the Project to continue contributing to the mix of uses in the Capitol Gateway area while respecting its frontage on a monumental boulevard. The modifications will facilitate activated spaces at different planes, encourage the use of an outdoor terrace that provides views of the waterfront, and create a more effective ground floor space along S Street and the private alley to the north. In addition, the Application states that the proposed modifications are consistent with the special exception standards and will not be visually intrusive for neighboring buildings. (Ex. 2.)

### **Responses to the Application**

8. On June 22, 2023, OP submitted a report (“OP Report”) recommending approval of the Application. The OP Report found that the Application can appropriately be considered a Modification of Consequence and that the changes proposed are generally consistent with the intent of the Original Order and should not have detrimental impacts on the design of the building. (Ex. 4.)
9. The OP Report noted that the Applicant’s updated plans show some retail doors on Half Street as swinging into public space, which is generally prohibited. The OP Report stated that these doors would need to be either recessed or screened by show windows or appropriate landscaping areas, as guided by public space regulations. (Ex. 4.) In response to this comment, the Applicant submitted updated floor and site plans dated July 17, 2023, which reflect revisions to the retail doors so that they no longer swing into public space. (Ex. 5, 5A.)
10. On July 27, 2023, ANC 6D submitted a report (“ANC Report”) stating that at a duly noticed and regularly scheduled monthly meeting on July 17, 2023, with a quorum present, ANC 6D voted 7-0-0 to submit a letter of conditional support for the Application based on ANC 6D’s continuing concerns regarding the following:
  - S Street Façade: The ANC Report expressed concerns that the Applicant’s proposed changes to the S Street façade removed some of the originally proposed white framing element on the south side, “which somewhat darkens the façade and reduces some of the striking complementarity to the [Frederick Douglass Memorial] Bridge.”;
  - Ground Floor Public Space: The ANC Report raised concerns about the proposed modifications to the ground floor public space facing S Street and introduction of an indoor/outdoor bar and coworking space. ANC 6D believes this space should be clearly perceived as public space and suggests the Applicant add color cues or explore other creative options that clearly signal their public intention; and
  - Private Alley Design and Circulation: The ANC Report stated that the proposed modifications will reduce the number of curb cuts in the alley from three to two, reduce the number of short-term vehicle parking spaces from eighteen to four, and require all vehicular traffic to mix in the same space. ANC 6D remains concerned about the traffic mix in this primary area and requests that the Commission consider the potential impacts on traffic flow.(Ex. 6.)
11. In response to the Commission’s request at its July 27, 2023 public meeting, that the Applicant submit written responses to the issues and concerns raised by ANC 6D, the

Applicant submitted a supplemental statement dated September 7, 2023, with the following responses to the ANC Report:

- **S Street Façade**: The Applicant explained that its proposed changes to the ground floor façade along S Street were intended to improve the pedestrian experience by creating more variety and articulation along S Street. Furthermore, removing the white framing element helps extend the brick pier motif connecting Half Street and South Capitol Street and emphasizes the larger white frame above ground level, which draws pedestrians’ eyes upward to make a strong visual connection between the building, the waterfront, and the Frederick Douglass Memorial Bridge. The proposed addition of the canopy over the outdoor public amenity spaces provides the building with greater architectural continuity;
- **Ground Floor Public Space**: The Applicant stated it agrees with the ANC that the ground floor public space should be inviting to pedestrians and has designed it with a larger setback with open seating concepts and generous landscaping to achieve that end. The Applicant noted that the amenity terrace is covered by a solid canopy and is envisioned to have a variety of seating opportunities as well; and
- **Private Alley Design and Circulation**: The Applicant stated that the goal of eliminating a curb cut was to improve ingress/egress and short-term parking and deliveries as well as refine the design to achieve a better building front before Phase 2 is constructed. Creating a drop-off in lieu of an overabundance of short-term parking promotes a “front door” concept. Eliminating short-term parking also simplifies traffic and reduces vehicle trips. The new drop-off area is designed to be one-way in and one-way out, which also limits the number of locations that vehicles enter and exit the building, further reducing the potential for conflicts with pedestrians and improving overall safety.

(Ex. 7.)

### **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.” Under Subtitle Z § 703.4, examples of a Modification of Consequence include “a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission.”
3. At its public meeting on June 29, 2023, the Commission determined that the Application qualifies as a Modification of Consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a redesign of architectural elements and open spaces from the final design previously approved by the Commission, and therefore the modification can be granted without a public hearing pursuant to Subtitle Z § 703.1.
4. Also, at its public meeting on June 29, 2023, the Commission established a timeframe for a response from ANC 6D, the only other party to the original proceeding, pursuant to

Subtitle Z § 703.17(c)(2). The Commission notes that ANC 6D submitted a response prior to the Commission’s consideration of the Application at its July 27, 2023 and September 14, 2023 public meetings.

5. The Commission finds that the Application is consistent with the original Design Review approved in Z.C. Order No. 21-20 because the requested modifications include only a minor change to the layout and massing of the approved penthouse structure, minor changes to the S Street ground floor space and façade which will improve the Project’s overall design and streetscape experience, and minor changes to the private alley’s design and traffic circulation plan for the site. The Commission notes that the proposed modifications do not result in any change in use nor require any additional relief from the Zoning Regulations.

**“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP**

6. The Commission is required to give “great weight” to the recommendation of OP pursuant to § 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 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
7. The Commission notes OP’s finding that the Application can appropriately be considered as a Modification of Consequence and finds persuasive OP’s recommendation that the Commission approves the Application and therefore concurs in that judgment.

**“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC**

8. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 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) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
9. The Commission recognizes ANC 6D’s conditional support for the Application and addresses the issues and concerns raised in the ANC Report as follows:
  - **S Street Façade:** The Commission acknowledges ANC 6D’s concern that the removal of some of the originally proposed white framing element on the building’s south side darkens the façade and may reduce the Project’s complementary relationship with the Frederick Douglass Memorial Bridge. However, the Commission believes that the Applicant’s proposed change represents an improvement over the original design because the removal of the white framing element at the ground floor enhances the visual impact of the larger white frame above the ground level and draws viewers’

attention towards the Bridge in the background. This results in a superior design in this respect and a stronger connection between the building and the Bridge;

- Ground Floor Public Space: The Commission acknowledges ANC 6D’s concern about whether the public space on S Street has been appropriately designed to encourage public use. The Commission is persuaded by the Applicant’s explanation that it intentionally designed the public space to be inviting to pedestrians through accommodating a larger setback and providing open seating and access from the sidewalk to the terrace. The Commission believes these design features effectively identify the public space as intended for public use; and
- Private Alley Design and Circulation: The Commission acknowledges ANC 6D’s concerns about the reduction in curb cuts, short-term parking, and resulting impacts on the traffic flow. However, the Commission is persuaded by the Applicant’s explanation that these changes are meant to simplify traffic flow and further activate the building’s northern façade between Phase 1 and Phase 2. The Commission believes these changes will improve vehicle circulation and pedestrian safety.

### DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a Modification of Consequence to Z.C. Order No. 21-20, subject to the following:

The conditions of Z.C. Order No. 21-20 remain unchanged and in effect, except as follows (additions are shown **bold/underlined** and deletions in ~~bold/strikethrough~~):

Conditions 1 and 4 are hereby revised to read as follows:

#### **Project Development**

1. The Project shall be built in accordance with the plans and elevations dated November 12, 2021 (Ex. 3F1-3F3.), as updated by the plans dated January 4, 2022 (Ex. 11A1-11A3.) as updated in Exhibit 26A, 30A, and 30B **of the record for Z.C. Case No. 21-20, as modified by the plans dated May 4, 2023 and marked as Exhibits 2C1-2C4 of the record for Z.C. Case No. 21-20A, as further modified by the plans dated July 17, 2023 and marked as Exhibit 5A of the record for Z.C. Case No. 21-20A** (collectively, the “Final Plans”), and with requested zoning flexibility, subject to the following areas of flexibility:

[...]


#### **Pedestrian safety measures in alley**

4. For the life of the Project, the Applicant shall provide the alley improvements shown on Exhibit 11A3, sheet L12 **of the record for Z.C. Case No. 21-20, as modified by the plans dated May 4, 2023 and marked as Exhibit 2C4, sheet L15 of the record for Z.C. Case No. 21-20A.**

**VOTE (September 14, 2023): 4-0-1**

(Joseph S. Imamura, Robert E. Miller, Anthony J. Hood, and Tammy Stidham to **APPROVE**; third 3<sup>rd</sup> Mayoral Appointee seat vacant).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 21-20A shall become final and effective upon publication in the *District of Columbia Register*; that is, on December 29, 2023.

  
\_\_\_\_\_  
**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
\_\_\_\_\_  
**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

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 IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 21-20B**

**Z.C. Case No. 21-20B**

**Steuart Investment Company**

**(Two-Year Time Extension of an Approved Design Review @ Square 662, Lot 16)**

**April 25, 2024**

Pursuant to notice, at its public meeting on April 25, 2024, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of Steuart Investment Company (the “Applicant”) for a two-year time extension of an approved Design Review originally approved in Z.C. Order No. 21-20 (the “Original Order”) and modified in Z.C. Order No. 21-20A (the “Modification Order”) for a mixed-use multifamily residential building with ground-floor retail use (the “Project”) located at Lot 16 in Square 662 (“Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedure, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations”, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**I. Background**

**Prior Approvals**

1. Pursuant to the Original Order, the Commission granted Design Review approval to construct the Project with approximately 434 residential units and approximately 17,495 square feet of ground floor retail use in the Buzzard Point neighborhood at the corner of S Street, S.W., Half Street, S.W., and the South Capitol Street right-of-way.
2. The Property is located in the CG-4 (Capitol Gateway) zone and abuts South Capitol Street; therefore, pursuant to the Commission’s authority under Subtitle K § 512.1(d), the Project was reviewed and approved in accordance with the CG Zone Design Review criteria of Subtitle K, Chapter 5 and the general Design Review criteria of Subtitle X, Chapter 6.
3. Pursuant to the Modification Order, the Commission approved a Modification of Consequence for changes to the Project’s penthouse, the proposed streetscape along S Street, SW, and the design along the private alley to the north of the building.

### **Parties and Notice**

4. Advisory Neighborhood Commission (“ANC”) 6D, in which the Property is located, is the “affected ANC” and automatically party to the Application. Aside from the affected ANC, there were no other parties to the original proceeding for Z.C. Case No. 21-20.
5. On March 15, 2024, the Applicant served the Application on ANC 6D, as well as the Office of Planning (“OP”) and District Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 3.)

### **II. The Application**

6. On March 15, 2024, the Applicant filed the Application requesting a two-year time extension of the Original Order, prior to the expiration of the validity period on April 8, 2024, to extend the Design Review approval. The Applicant requested that it be allowed until April 8, 2026, to apply for a building permit for the Project. The Application stated that it met the standards for a time extension enumerated in Subtitle Z § 705.2. (Ex. 3.)
7. The Applicant stated there has been no substantial change of material facts since the Commission’s approval in the Original Order, as updated in the Modification Order, and that the Project remains consistent with the design and program approved by the Commission. (Ex. 3.)
8. The Applicant asserted that there is good cause to grant the requested extension in this case because, while the Applicant and development team have continued to move the Project forward, due to unanticipated delays additional time is needed to allow DDOT to complete review of the Applicant’s proposed significant infrastructure improvements to raise the public street network surrounding the Property out of the 500-year floodplain and commencement of such infrastructure work, which the Applicant is implementing in conjunction with the Project’s development. (Ex. 3.)

### **III. Responses to the Application**

9. On April 12, 2024, OP submitted a report stating that OP believed the Application met the standards for the requested two-year extension and recommending approval of the Application. OP agreed with the Application that there has been no substantial change in any of the material facts upon which the Commission based its original approval and that the Applicant had demonstrated good cause for the extension. (Ex. 4.)
10. ANC 6D submitted a written report dated April 16, 2024, stating that at its April 8, 2024 properly noticed public meeting, at which a quorum was present, ANC 6D voted in support of the Application. ANC 6D stated that the unanticipated delays in obtaining the necessary agency approvals for the proposed infrastructure work necessitate approval of the requested extension. (Ex. 5.)

## CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the period of an order approving a Design Review upon determining that the time extension request demonstrates satisfaction of the requirements of Subtitle Z § 705.2 and compliance with the limitations of Subtitle Z §§ 705.3, 705.5, and 705.6.
2. The Commission concludes that the Applicant timely filed the Application prior to the expiration of the validity period for the Design Review approval on April 8, 2024, which deadline the Application seeks to extend.
3. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that all parties are allowed 30 days to respond.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 705.2(a) by demonstrating that it had served ANC 6D, the only other party to the Original Order, and that ANC 6D was given 30 days to respond from the March 15, 2024, date of service.
5. Subtitle Z § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the Design Review that would undermine the Commission's justification for approving the Design Review.
6. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) based on the Application and OP Report, which stated that no substantial change has occurred to the material facts upon which the Commission had relied in issuing the Original Order.
7. Subtitle Z § 705.2(c) requires that an application demonstrate with substantial evidence one or more of the following criteria:
  - (1) *An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;*
  - (2) *An inability to secure all required governmental agency approvals for a development by the expiration date of the order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or*
  - (3) *The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.*

8. The Commission concludes that the Application met the standards of Subtitle Z § 705.2(c)(2) due to the unanticipated delays and additional time that is needed for DDOT to complete review and for commencement of construction of the significant infrastructure improvements the Applicant will be implementing in conjunction with the Project in order to raise the public street network surrounding the Property out of the 500-year floodplain. The Commission agrees that these circumstances constitute good cause for the requested two-year extension of the Original Order.

**“Great Weight” to the Recommendations of OP**

9. The Commission is required to give “great weight” to the recommendations of OP stated in the OP Report pursuant to § 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 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
10. The Commission notes OP’s conclusion that there has been no substantial change to the material facts upon which the Commission’s original approval was based and finds persuasive OP’s recommendation to approve the requested two-year extension.

**“Great Weight” to the Written Report of the ANCs**

11. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 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) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Spring Valley-Wesley Heights Citizens Ass’n v. District of Columbia Zoning Comm’n*, 856 A.2d 1174, 1180 (D.C. 2004).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978.) (citation omitted).)
12. The Commission finds ANC 6D’s recommendation to approve the Application persuasive and concurs in the ANC’s judgment that the unanticipated delays in obtaining the necessary agency approvals for the Applicant’s proposed infrastructure work justify approval of the requested extension.

**DECISION**

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Applicant’s request for a two-year time extension of Z.C. Order No. 21-20, as amended in Z.C. Order No. 21-20A, to extend the validity period and deadline to apply for a building permit until April 8, 2026.

**Final Action**

**VOTE (April 25, 2024): 4-0-1**

(Tammy Stidham, Joseph S. Imamura, Anthony J. Hood, and Robert E. Miller to approve; 3<sup>rd</sup> Mayoral Appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 21-20B shall become final and effective upon publication in the *District of Columbia Register*; that is, on June 28, 2024.

  
\_\_\_\_\_  
**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
\_\_\_\_\_  
**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**

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 IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.