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ZONING COMMISSION
District of Columbia
CASE NO. 15-11
EXHIBIT NO. 28
 District of Columbia
 CASE NO. 15-11
 EXHIBIT NO. 28

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-11
Z.C. Case No. 15-11
SQ700 Trust, LLC
(Capitol Gateway Overlay Review @ Square 700, Lots 43 and 866)
July 27, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on June 25, 2015, to consider an application filed by SQ700 Trust, LLC, on behalf of AG/MR SQ700 Office Owner, LLC, and AG/MR SQ700 Residential Owner, LLC ("Applicant") for review and approval of a new office building pursuant to §§ 1604, 1605 and 1610 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR" or "Zoning Regulations"), which apply to new construction on any lot with frontage along South Capitol Street, M Street, S.E., and to properties within Square 700, and includes requests for area variance from the requirement of § 1604.3, which regards street wall setbacks for buildings along M Street, S.E., and from § 2115.4, which regards grouping of compact parking spaces within the garage; and special exception approval relating to penthouses for CR-zoned properties, as set forth in § 630.4(a) of the Zoning Regulations.¹ The public hearing was conducted in accordance with the provisions of § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

1. On April 28, 2015, the Applicant filed an application for review and approval of a new office building pursuant to §§ 1604, 1605, and 1610 of the Zoning Regulations, which apply to new construction on any lot within the Capitol Gateway ("CG") Overlay District with frontage along South Capitol Street and along M Street, S.E., as well as properties within Squares 700 and 701 north of the Ballpark site. The subject property is located in Square 700 and consists of Lots 43 and 866 ("Property"). The application included requests for area variance relief from § 1604.3, which requires that the street wall of each new building shall be set back for its entire height and frontage along M Street not less 15 feet measured from the face of the adjacent curb along M Street, S.E., and special exception approval to provide a penthouse that does not meet the 1:1 setback requirement of § 630.4(b) of the Zoning Regulations.
2. The Applicant filed a prehearing submission in support of the application on June 5, 2015 ("Prehearing Submission"). (Exhibit ["Ex."]13-13C.) The Prehearing Submission included a statement summarizing the application's compliance with the applicable provisions of the CG Overlay and justification for the requested area variance relief

¹ The Applicant originally requested special exception approval pursuant to § 630.4(b) to provide a penthouse that does not set back from all exterior walls a distance equal to its height above the roof upon which it is located; however, given concerns raised by the Office of Planning and the Commission regarding compliance with the General Height Act of 1910, the Applicant revised its penthouse design to comply with § 630.4(b) by providing a penthouse with walls of unequal height, necessitating relief, pursuant to § 411.11, from the requirement established under §§ 411.5 and 630.4(a). The Applicant also supplemented its request for area variance relief at the public hearing relating to the grouping of compact vehicle parking spaces provided within the building.

regarding the projection of the building across the required 15-foot setback along M Street, S.E., and special exception regarding the penthouse setback. The Prehearing Submission also included updated architectural drawings, a traffic impact study prepared by Gorove/Slade, and resumes of expert witnesses that might testify in support of the application.

3. The Commission held a hearing on the application on June, 25, 2015. Parties to the case included the Applicant and Advisory Neighborhood Commission (“ANC”) 6D, the ANC within which the Property is located. Proper notice of the hearing was provided by the Office of Zoning pursuant to § 3015 of the Zoning Regulations.
4. Witnesses appearing at the hearing on behalf of the Applicant included Amy Phillips of Monument, William Hellmuth, of HOK, and Daniel VanPelt of Gorove/Slade. Mr. Hellmuth and Mr. VanPelt were recognized by the Commission as experts in their respective fields of architecture and transportation engineering.
5. At the conclusion of the public hearing on June 25, 2015, the Commission indicated support for the overall design and materials of the office building, including the curved projection along M Street, S.E., but requested that the Applicant further study certain aspects of the project's design, including the penthouse setback and terrace-level wall articulation and submit revised materials to the record.
6. The Applicant submitted materials responsive to the Commission's comments on July 7, 2015, including an updated set of architectural drawings which replaced all earlier drawings submitted to the record (“Final Architectural Drawings”) (Ex. 23A), (“Posthearing Submission”) and submitted proposed findings of fact and conclusions of law, pursuant to § 3026 of the Zoning Regulations on July 13, 2015. (Ex. 25.) In its Posthearing Submission, the Applicant revised its penthouse design to comply with the setback requirement established in § 630.4(b) of the Zoning Regulations, necessitating relief, pursuant to § 411.11, from the requirement that penthouses shall have enclosing walls of equal height, established under §§ 411.5 and 630.4(a). As discussed at the public hearing, the Applicant also requested area variance relief from § 2115.4, relating to the grouping of compact vehicle parking spaces provided within the building.
7. At its July 27, 2015, public meeting, the Commission took final action to approve the application, including the requested area variance and special exception. The Commission determined that the project satisfies all applicable requirements of the CG Overlay District.

Project Overview

8. The Property, which is rectangular in shape and measures approximately 35,558 square feet, is located in the northern portion of the square, with frontage on M Street, South Capitol Street, and Van Street. It is currently unimproved and utilized as a temporary seasonal surface parking lot for baseball games.
9. The Applicant proposes to develop the northern portion of the Property with a new 10-story office building with ground-floor preferred uses. As shown in the Final Architectural Drawings, three levels of below-grade parking will be provided with access from Van Street, S.E. Overall building height will not exceed 130 feet, and gross floor area for the building will total approximately 124,362 square feet. The Applicant is currently finalizing proposed drawings for a 13-story multi-family residential building to occupy the southern portion of the Property, which will be subject to separate review by the Commission pursuant to § 1610 of the Zoning Regulations. Construction of the two buildings is contemplated to be executed simultaneously. While the two buildings will operate as separate buildings and will not be connected, they ultimately will share a single record lot once the current lots comprising the Property are consolidated by subdivision plat. Access to the parking garage for the office building will be provided under a portion of the residential building.
10. The present application replaces a long-pending and recently withdrawn application (Z.C. Case No. 09-22) related to the Property submitted by the previous owner of the Property, which application proposed a speculative 12-story office building with ground-floor preferred uses for the entire site. The ANC expressed opposition to the earlier design as not sufficiently addressing the gateway location of the Property into the neighborhood along M Street as well as its location along this stretch of South Capitol Street.
11. The building proposed in the present application has been uniquely designed for its future occupant, the National Association of Broadcasters, which is relocating its headquarters to the Property, and with a focus on the Property's unique location in this neighborhood, at the intersection of M and South Capitol Streets and opposite the historic St. Vincent De Paul Church immediately north across M Street.
12. The building presents as a 10-story, 130-foot tall, masonry and glass office building with ground-level preferred uses, stepping back along South Capitol Street above the eighth floor consistent with the requirements of the CG Overlay. The three street-facing elevations of the building, along South Capitol, M, and Van Streets, respectively, all share a strong masonry frame, in the form of dark stone at the ground level and lighter precast concrete above. Variation in the patterning of this grid, in coordination with aluminum panels and a mix of fenestration types, establish a unique cadence for each of the façades.

13. As stated by the project architect, along South Capitol Street, the combination of the required setback and the mixture of types and colors of materials, establishes a horizontality that is in keeping with the monumental focus of South Capitol Street. This approach also provides a deferential context to the historic church located immediately to the north, including patterning of the masonry framework of the office building that subtly responds to the design language of the church, particularly the tower/campanile element.
14. As further stated by the project architect, behind this monumental façade, the Applicant has attempted to “turn the corner” toward M Street through a wave-like glass curtain wall above the second level of the M Street façade. This design feature, created through a combination of projection across the M Street setback line and related recess into the building envelope, draws the attention of passers-by going south along South Capitol as well as west along M Street to this gateway into the neighborhood and to the building’s lobby. At the same time, this undulating wall serves to gradually transition the building’s height from South Capitol to Van Street and to mark the building’s entrance.
15. As further stated by the project architect, the building's frontage along Van Street, a much narrower public right-of-way which conveys more of the personality of an alley, is presented with a pseudo-industrial architectural treatment in the form of a heavy irregular concrete grid frame, evocative of the neighborhood's history, while in keeping with the design and materiality of the primary facades. Vehicular entrances for parking and loading purposes are provided along this frontage as required under the CG Overlay.
16. As shown in the Final Architectural Drawings, the materials palette for the building includes stone, precast concrete, high-performance glazing, and aluminum panels.
17. The building will incorporate a number of elements to enhance its sustainability, and the Applicant represented that it expects the finished building would qualify for at least LEED Gold NC 2009 certification. To that end, included in the Final Architectural Drawings, the Applicant submitted a revised draft LEED checklist identifying those elements and features the Applicant may pursue in satisfaction of its sustainability commitment. The building design also satisfies the Green Area Ratio ("GAR") requirements of Chapter 34 of the Zoning Regulations.
18. The project architect testified that the building will have a broadcasting dish that will be enclosed behind a penthouse and not visible from the street. He also testified that any negative affect of the building’s glazing on birds would be limited because the building is not on a migratory flight path, its glazing will not be highly reflective because of the type of glass used and the northern orientation of the glazing, and because the glazing covers only a small portion of the building.

Description of the Surrounding Area and Zoning Classification

19. The Property is located in the northern half of Square 700, which is bounded by M Street on the north, South Capitol Street on the west, Van Street on the east, and N Street on the south. The Property is bounded to its south by private property (Lot 44), which is improved with a five-story brick self-storage building. An apartment building with ground and second floor retail uses has been approved by the Commission for the southern portion of Square 700, fronting on M Street. To the east of the Property, across Van Street, in Square 701, the Commission has approved a mixed-use office, retail, and residential project spanning from M Street to N Street. Nationals Park is located to the immediate south of Square 700, across N Street, S.E.
20. The Property is zoned Capitol Gateway Overlay/Commercial Residential (“CG/CR”), as are all the adjacent properties south of M Street and west of First Street. East of First Street the properties are zoned Southeast Federal Capital Overlay Commercial Residential (“SEFC/CR”), and on the north side of M Street properties are zoned CG/C-3-C.
21. Within the CG Overlay, residential and nonresidential floor area on each individual parcel within the CR Zone District shall not exceed a maximum building density of 8.5 floor area ratio (“FAR”) on parcels for which a height of 130 feet is permitted by the General Height Act of 1910 (“Act”), pursuant to § 1602.1(a). As a result of the Property's frontage on South Capitol Street, 130 feet of height is permitted under the Act.
22. Section 1602 further provides that two or more lots within the CG Overlay may be combined for the purpose of allocating residential and nonresidential uses regardless of the normal limitation on floor area by uses on each lot. This allocation is accomplished by a combined lot development covenant approved by the District of Columbia and recorded in the land records.
23. In addition to the amount of density that may be transferred in accordance with § 1602.1(a), the Commission may, at its discretion, grant an additional transfer of density of 1.0 FAR maximum to or within Squares 700, 701, and 702, subject to an applicant addressing to the satisfaction of the Commission the objectives and guidelines of §§ 1601 and 1604-1607, as applicable. To that end, the Applicant submitted this application for Commission review and approval. A combined lot development covenant has been recorded in the land records involving the necessary allocations of use and density to permit non-residential construction on the Property totaling up to 9.5 FAR. As a result of the Applicant's plans to construct multiple buildings on the single record lot to be established on the Property, the office building measures far less than 9.5 FAR; however,

the Applicant includes reference to § 1602 in its request for Commission review in anticipation of the additional building to be constructed on the Property.

Capitol Gateway Overlay District Design Requirements

The Project Meets the Requirements of § 1604

24. The application must satisfy the requirements of § 1604 of the Zoning Regulations because the new building will have frontage on M Street, S.E., within the CG Overlay. The Commission finds that the project meets the requirements of § 1604.
25. The building complies with the requirement that no driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building. As shown in the Final Architectural Drawings, the below-grade parking garage and the building's loading facilities will be accessed from Van Street, S.E. (§ 1604.2.)
26. As shown in the Final Architectural Drawings, the building does not comply with the requirement that the street wall of each new building or structure located on M Street, S.E., shall be set back for its entire height and frontage along M Street not less than 15 feet measured from the face of the adjacent curb, and the Applicant has requested area variance relief from the Commission pursuant to its authority established in § 1610.7 of the Zoning Regulations. (§ 1604.3.)
27. As shown in the Final Architectural Drawings, the building complies with the requirement that each new building shall devote not less than 35% of the ground-floor gross floor area to retail, service, entertainment, and arts uses and that such preferred uses shall occupy 100% of the building's street frontage along M Street, except for space devoted to building entrances or required to be devoted to fire control. (§ 1604.4.)
28. As shown in the Final Architectural Drawings, the building complies with the requirement that not less than 50% of the surface area of the street wall of any new building along M Street shall be devoted to display windows having clear or low-emissivity glass except for decorative accent, and to entrances to commercial uses of the building. (§ 1604.6.)
29. As shown in the Final Architectural Drawings, the building complies with the requirement that the minimum floor-to-ceiling clear height for portions of the ground level devoted to preferred uses shall be 14 feet. (§ 1604.7.)

The Project Meets the Requirements of § 1605

30. The proposed project is subject to the requirements of § 1605 of the Zoning Regulations because the new building will have frontage on South Capitol Street within the CG Overlay. The Commission finds that the project meets the requirements of § 1605.
31. As shown in the Final Architectural Drawings, the building complies with the requirement that each new building or structure located on South Capitol Street shall be set back for its entire height and frontage not less than 15 feet. (§ 1605.2.)
32. As shown in the Final Architectural Drawings, the building complies with the requirement that any portion of a building or structure that exceeds 110 feet in height shall provide an additional 1:1 setback from the building line along South Capitol Street. (§ 1605.3.)
33. The building complies with the requirement that no private driveway may be constructed or used from South Capitol Street to any parking or loading berth areas in or adjacent to a building or structure constructed after February 16, 2007. As shown in the Final Architectural Drawings, the below-grade parking garage and the building's loading facilities will be accessed from Van Street, S.E. (§ 1605.4.)
34. As shown in the Final Architectural Drawings, the building complies with the requirement that a minimum of 60% of the street wall shall be constructed on the setback line for each new building or structure located on South Capitol Street. (§ 1605.5.)

The Project Meets the Requirements of §1610

35. Subsections 1610.1(b), 1610.1(c), 1610.1(d), 1610.1(f), and 1610.2 of the Zoning Regulations provide that new construction on a lot located within Square 700 or 701, north of the ballpark site, on a lot abutting M Street or South Capitol Street, or on any lot that is the recipient of density through the combined lot provisions of § 1602, require the review and approval of the Commission. Subsection 1610.3 of the CG Overlay provisions provides that in addition to demonstrating that the proposed building meets the standards set forth in § 3104 of the Zoning Regulations, an applicant requesting approval under the CG Overlay provisions must also prove that the proposed building meets the requirements of §§ 1610.3(a) through 1610.3(f). Subsection 3104.1 of the Zoning Regulations provides that special exceptions should be granted when "the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." (11 DCMR § 3104.1.)

36. Subsection 1610.3 further provides that the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation of the proposed building must comply with the specific requirements set forth in that section, and must help achieve the objectives of the CG Overlay District as set forth in § 1600.2 of the Zoning Regulations. The Commission finds that the proposed building meets the requirements of § 1610 and is consistent with all of the applicable purposes of the CG Overlay.
37. The proposed building's height and density are allowed at this location, and the proposed use is consistent with the Property's designation on the Future Land Use Map. The commercial and retail uses contemplated by the project will help foster an appropriate mix of uses within the square and the surrounding area. (§ 1600.2(a).)
38. The proposed building is planned to include significant space devoted to preferred retail or other preferred uses on the ground floor, including approximately 14-foot floor-to-floor heights. This space will accommodate precisely the types of retail, service, and entertainment uses encouraged by the CG Overlay. (§ 1600.2(b)).
39. The CG Overlay provides for the establishment of South Capitol Street as a monumental civic boulevard. As shown in the Final Architectural Drawings, the design of the building, including the masonry façade treatment and articulation, all further the monumental focus of South Capitol Street. (§ 1600.2(g).)
40. The proposed project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the neighboring property in accordance with the Zoning Regulations and Zoning Map. The Commission finds that the project assures development of the area with a mixture of uses and a suitable height, bulk, and design. (§ 1610.3(a).)
41. The proposed building will help achieve the desired mix of uses in the CG Overlay as set forth in §§ 1600.2(a) and (b), with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail, or service uses. The Commission finds that the ground-level preferred uses contemplated for the building along its M Street frontage, with expansive floor-to-floor heights and façade treatment intended to emphasize the potential preferred uses and human scale, all of which help achieve the goals of the CG Overlay. (§ 1610.3 (b).)
42. The Commission finds that the height, bulk, and architectural design of the proposed building, as shown in the Final Architectural Drawings, will be in harmony with the context of the surrounding neighborhood and will have no effect on the existing street grid. (§ 1610.3 (c).)

43. The Commission finds that the proposed building has been sited to minimize conflicts between vehicles and pedestrians. Access to the building's loading and parking facilities along Van Street will help minimize potential conflicts between vehicles and pedestrians. Further, the Applicant has stacked its loading berths so as to minimize the width of the loading access curb cut and thereby further minimize potential conflicts. The Applicant has committed to provide 48 bicycle parking spaces within the building where four spaces are currently required under the Zoning Regulations. The Applicant's traffic impact study confirms that the project minimizes negative impacts to public space. (§ 1610.3(d).)
44. The Commission finds that the proposed building's façades have been designed to minimize unarticulated walls adjacent to public spaces through façade articulation. Through building geometry along with varying material and finish palettes, the Applicant minimizes unarticulated blank walls. As shown in the Final Architectural Drawings, the Applicant responded to concerns from the Commission regarding treatment of the terrace-level wall located at the setback of the 9th and 10th floors from South Capitol Street. The Applicant provided additional descriptive materials as part of its Posthearing Submission demonstrating the articulation and materials proposed for this wall, which covers the location of this building's core at the 9th and 10th floors. (§ 1610.3 (e).)
45. The proposed project will be designed with sustainability features including at least 60 points on the conceptual LEED scorecard, which qualifies as LEED-Gold, and will have no significant adverse impacts on the natural environment. (§ 1610.3(f).)
46. This application was referred to the Office of Planning ("OP") and the District Department of Transportation ("DDOT") for review. (§ 774.6.)

Variance Requests from the Required Setback along M Street, S.E. and Compact Parking

47. Subsection 1610.7 of the Zoning Regulations states that the Commission may hear and decide any additional requests for special exception or variance relief needed for the Property and that such requests shall be advertised, heard, and decided together with the application for review and approval for compliance with the CG Overlay provisions. Pursuant to this provision, the Applicant requests area variance relief from the requirement set forth in § 1604.3 of the Zoning Regulations that the street wall of each new building shall be set back for its entire height and frontage along M Street, S.E., not less than 15 feet measured from the face of the adjacent curb along M Street, S.E., in order to provide the proposed curvilinear projection at the third level and above along M Street, S.E. The Applicant also requests variance relief from § 2115.4, which provides that parking spaces designated as "compact car" shall be placed in groups of at least five contiguous spaces with access from the same aisle. The request regarding compact

parking is a supplement to the initial application, pursuant to comment received by OP and discussed at the public hearing.

48. The test for variance relief is three-part: (1) demonstration that a particular piece of property is affected by some exceptional situation or condition; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or substantial impairment of the zone plan. The Commission finds that variance relief is appropriate in this application.
49. The Commission finds that the Property fronts on three streets within the CG Overlay, including two primary axes which are the subject of extensive design control within the overlay. As such, the Property is exceptional in being in a very prominent location and acts as the “front door” to the near southeast neighborhood. The property is subject to multiple required setbacks, percentage of street wall requirements, ground-floor preferred uses with specialized dimensional requirements and prohibitions in terms of location of required loading and parking egress. Because of this prominent position, OP noted that it is reasonable that a building on this site could utilize additional architectural gestures to signify its importance. Further, the various setbacks and vehicle access requirements establish a structural configuration resulting in a narrow column grid.
50. The Commission finds that the strict application of the Zoning Regulations will result in a practical difficulty upon the Applicant in that it will significantly constrain the Applicant’s efforts to provide an exceptional design for this prominent property, with significant frontages and related design requirements along both its primary facades, and to dynamically respond to comments received from the community to earlier design proposals for the site. The wave-shaped projection, coupled with the related wave-shaped indentation in the M Street façade, allows the design to transition from the solid linear massing provided to emphasize the monumentality along South Capitol Street to the taller, more active and pedestrian-focused M Street elevation. It also provides the Applicant a needed opportunity to highlight the building’s entrance along a largely monolithic stretch of M Street. Absent relief from the setback requirement, the Applicant’s efforts to provide an iconic focal point at this gateway intersection while harmoniously relating the designs of the principal façades of this corner location will be significantly compromised.
51. The Commission finds that the strict application of the compact parking space grouping requirements set forth in § 2115.4 will also result in a practical difficulty upon the Applicant in that they will result in inefficiencies within the building’s parking garage. As a result of the column spacing in the building, in turn resulting from the several design requirements and prohibitions applicable to the Property, the parking garage has numerous locations where only compact parking spaces can be provided.

52. The requested relief from the M Street setback requirement can be granted without substantial detriment to the public good and without substantially impairing the zone plan. Any impacts of the grant of variance relief from the setback requirements are not experienced at a pedestrian level, as the 15-foot street wall setback is maintained at the ground and second levels. The projection will provide an interesting visual element from both vantages along M Street as well as from traffic along southbound South Capitol Street. Furthermore, given that the projection does not begin until the third level of the building and above, there will be no negative impact upon pedestrian traffic along M Street, as provided in §1600.2(e). Given that the pedestrian experience is not compromised by the proposed projection but rather enhanced by the activated streetscape, approval of the requested relief will neither harm the public good or the zone plan.
53. The requested relief relating to grouping of compact parking also can be granted without substantial detriment to the public good and without substantially impairing the zone plan. The location of the compact parking spaces within the building will allow a more efficient use of the parking garage.

Special Exception for Penthouse (§ 2108)

54. Under § 411.11 of the Regulations, the Board of Zoning Adjustment (“Board”) may approve the location, design, number, or any other aspect of a roof structure even if it does not comply with the requirements of § 630.4, where it would be impractical because of operating difficulties, size of building lot or other conditions relating to the building or surrounding area that would make full compliance unduly restrictive, prohibitively costly or unreasonable. The Board, and by extension the Commission pursuant to § 1610.7, has the power to approve a roof structure under § 411.11, provided that the intent and purpose of the chapter and title of the Zoning Regulations are not materially impaired by the structure, and the light and air of adjacent buildings are not affected adversely.
55. The Applicant’s roof level plan is in keeping with the purpose and intent of the Zoning Regulations. As a result of the curving architectural feature, an elevator override for one of the four elevators in the building creates a situation where a small portion of the penthouse must be provided in a location that is less than 18’6” from the nearest building edge. The proposed penthouse is 18’6” above the roof of the building. The Applicant originally requested special exception approval, pursuant to §§ 3104, 411.11, and 630.4(b), to provide a penthouse that does not technically comply with the 1:1 setback for that small portion of the penthouse.
56. Given the concerns noted by the Commission regarding compliance of the original penthouse design with the Act, the Applicant revised the design of the penthouse and is now proposing a penthouse that fully complies with the required setback of the Act as

well as the Zoning Regulations. In order to satisfy the setback requirement, the Applicant is now proposing that a small portion of the penthouse be provided at a lower overall height (10'6") than the remainder of the penthouse (18'6"). This revised condition is shown in the Final Architectural Drawings in plan on Sheets 19 and 20, and in section on Sheet 24, confirming that the setback is provided at a ratio of at least 1:1. The revised condition is also shown in elevation and perspective rendering at Sheets 26, 27, 29, 36, and 37, respectively. The Applicant therefore has amended its request to the Commission for special exception approval, now requesting, pursuant to § 411.11 of the Zoning Regulations, to provide a penthouse with enclosing walls of unequal height as required under §§ 411.5 and 630.4(a). The Commission finds that special exception approval regarding the height of penthouse walls is appropriate and does not create any noncompliance issue under the Act.

Office of Planning Report

57. By report dated June 15, 2015, OP recommended approval of the application. (Ex. 15.) In its report, OP noted that the application successfully addresses most of the criteria of the CG Overlay and recommended approval of the project if additional bike parking is provided. OP also noted its support for the requested M Street setback relief and noted its belief that variance relief was required regarding the grouping of compact parking spaces within the garage, which relief OP supported. OP noted that it could not support penthouse structure setback relief because the structure is above the Act height limit for the Property.
58. As shown in the Final Architectural Drawings, the Applicant increased the number of bicycle parking spaces within the garage to a total of 48 spaces.
59. In response to OP's suggestion that variance relief regarding the grouping of compact car spaces is required, the Applicant has requested variance relief from § 2115.4.
60. With respect to OP's concerns regarding the penthouse setback request and compliance with the Act, as shown in the Final Architectural Drawings, the Applicant has revised the design of the penthouse to comply with the setback requirement of § 630.4(b), and has requested variance relief from the requirement to provide penthouse enclosing walls of equal height. OP has indicated its support for this alternative design approach.

DDOT Report

61. By report dated June 24, 2015, DDOT provided its analysis regarding the parking, loading trip generation and vehicle turning impacts of the project on the District's transportation network. (Ex. 19.)

62. DDOT noted that Transportation Demand Management (“TDM”) is a set of strategies, programs, services, and physical elements that influence travel behavior by mode, frequency, time, route, or trip length in order to help achieve highly efficient and sustainable use of transportation facilities. In the District, this typically means implementing infrastructure or programs to maximize the use of mass transit, bicycle, and pedestrian facilities, and to reduce single occupancy vehicle trips during peak periods. DDOT stated that the Applicant's proposed TDM measures play a role in achieving the desired and expected mode split. The specific elements within the TDM plan vary depending on the land uses, site context, proximity to transit, scale of the development, and other factors. The TDM plan must help achieve the assumed trip generation rates to ensure that an action's impacts will be properly mitigated. Failure to provide a robust TDM plan could lead to unanticipated additional vehicle trips that could negatively impact the District's transportation network.
63. The Applicant proposed the following TDM strategies: (a) provide 12 long-term bicycle parking spaces for the office building; (b) unbundle the cost of residential parking from the cost of lease or purchase; (c) appoint TDM leaders (for planning, construction, and operations) at the residential and office buildings(the TDM Leaders will work with residents in the building to distribute and market various transportation alternatives and options); (d) dedicate two spaces in the residential garage for car sharing services to use with right of first refusal; (e) provide reserved spaces in the office garage for carpools and van pools; and (f) provide a public transit information screen; showing real-time information on nearby transit services, in the residential and office building lobbies.
64. DDOT did not find the Applicant’s proposed TDM measures to be sufficiently robust to address the impacts expected from the project. DDOT recommended the following additional TDM measures in order to support the project: (a) install a minimum of 48 long-term secure bicycle parking spaces for access by office and retail employees or install a Capitol Bikeshare station and fund its first year of operations; (b) install a minimum of six short-term bicycle parking spaces (three racks) within the building setback or public space near the office and retail entrances; (c) provide showers and lockers to encourage bicycling among office and retail employees; and (d) prohibit office and retail employees and retail customers from parking in the residential parking garage. The Applicant agreed to DDOT’s recommended additional TDM measures.
65. Since loading cannot be accessed through an alley, back-up maneuvers will occur in the public realm. To that end, DDOT has accepted the Applicant’s proposed following loading management plan: (a) a loading dock manager will be designated by the building management (duties may be part of other duties assigned to the individual). He or she will coordinate with vendors and tenants to schedule deliveries to the loading dock, for 30-foot trucks (not delivery vans); (b) all deliveries will be permitted between 7:00 a.m. and 4:00 p.m. seven days per week, except when events occur at Nationals Park.

Deliveries cannot be scheduled for the period between two hours when an event begins and one hour after an event is completed, including during the event itself (not including UPS/FedEx and similar deliveries); (c) trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20-Chapter 9, § 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route Map (godcgo.com/truckandbusmap).

66. In addition to the TDM and loading management measures, DDOT proposed the following mitigations as conditions of approval: (a) restrict northbound left turns on Van Street at M Street and install signage for a right-turn in, right-turn out ("RIRO"); and (b) amend the loading management plan to include the following: (1) All tenants will be required to schedule deliveries that utilize the loading dock (any loading operation conducted using a truck 20 feet in length or larger); (2) the dock manager will schedule deliveries to ensure that the docks' capacity is not exceeded (in the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time); and (3) a flagger will be present whenever a vehicle is entering or exiting the loading dock to ensure pedestrian, bicycle, and vehicle safety with truck back-in and exiting maneuvers. The Applicant agreed to these DDOT-requested mitigation measures.
67. All of the aforementioned TDM, loading management, and transportation mitigation measures, including the enhancements recommended by DDOT, have been included as conditions of this Order.

NCPC Report

68. On July 13, 2015, a report from Marcel Acosta, Executive Director of the National Capital Planning Commission ("NCPC"), was received into the hearing record. (Ex. 24.) In that report, Mr. Acosta stated that the proposed building is consistent with the intent and requirements of the CG Overlay District, but is inconsistent with the Comprehensive Plan for the National Capital and other federal interests due to a minimal violation of the penthouse setback requirements of the Height of Buildings Act. However, based upon the Applicant's revised penthouse design (see Footnote 1), NCPC submitted a supplemental report stating "the proposed building is now not inconsistent with the Comprehensive Plan for the National Capital and the requirements of the Height Act." (Ex. 27.)

ANC Report

69. By report dated June 13, 2015, ANC 6D reported that at its duly noticed meeting on June 8, 2015, it voted 5-0-1 to support the application. (Ex. 14.) The ANC noted that it supports the proposed architectural design, though it most prefers the curved glass projection portion of the design. The ANC noted its support for the project targeting the guidelines for LEED-Silver certification, but stated that it would prefer LEED-Gold or Platinum level certification. The report requested that any antennae or broadcast dishes not be visible from the street. The report requested that the Applicant reduce the glazing reflectivity on the building's glass facades and add other measures to mitigate the risk to birds. The report urged consideration of permeable and pliant paving materials around the site. The report encouraged the Applicant to work in concert with other local projects to ensure that Van Street is paved in an attractive and consistent manner. Finally, the ANC report stated that the ANC expected the Applicant to create an effective construction management plan and submit the plan to the ANC before it is enacted.

CONCLUSIONS OF LAW

1. The application was submitted pursuant to 11 DCMR §§ 1604, 1605 and 1610 for review and approval by the Commission, and pursuant to § 1607 for variance and special exception approval. The Commission concludes that the Applicant has met its burden of proof.
2. The Commission provided proper and timely notice of the public hearing on the application by publication in the *D.C. Register* and by mail to ANC 6D, OP, and owners of property within 200 feet of the site.
3. Pursuant to §§ 1604.1 and 1610.1 of the Zoning Regulations, the Commission required the Applicant to satisfy all applicable requirements set forth in §§ 1604.2 through 1604.9 and §§ 1610.2 through 1610.7. Pursuant to §§ 1605.1 and 1610.1, the Commission required the Applicant to satisfy all applicable requirements set forth in §§ 1605.2 through 1605.5 and §§ 1610.2 through 1610.7. Pursuant to § 1610.7, the Commission also required the Applicant to meet the requirements for variance relief set forth in §§ 3103, 1604.3, and 2115.4, and special exception approval set forth in §§ 3104, 411.5, 411.11, and 630.4(a). The Commission concludes that the Applicant has met its burden.
4. The proposed development is within the applicable height, bulk, and density standards for the CG/CR (Capitol Gateway Overlay/Commercial Residential) Zone District and will not tend to affect adversely the use of neighboring property. The overall project is also in harmony with the general intent and purpose of the Zoning Regulations and Map.

5. The Commission concludes that the proposed project will further the objectives of the CG Overlay District as set forth in § 1600.2 and will promote the desired mix of uses set forth therein. The design of the proposed building meets the purposes of the CG Overlay and meets the specific design requirements of §§ 1604 and 1605 of the Zoning Regulations excepting § 1604.3, from which the Commission has granted variance relief.
6. No person or parties appeared at the public hearing in opposition to the application.
7. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The affected ANC in this case is ANC 6D. The Commission carefully considered ANC 6D's recommendation for approval and concurs in its recommendation, and considered the issues and concerns stated in its report.
8. With respect to the ANC's issues regarding the curved glass design, preference for the Applicant to achieve a LEED-Gold rating, and request that there not be any visible antenna or broadcast dishes, the Commission notes that the Applicant has satisfied these requests. The building includes the curved glass in the final design. The Applicant has stated on the record that the project will eligible to achieve LEED-Gold, and that the broadcast dish will be enclosed behind the building's penthouse.
9. As to the ANC's requests regarding modifying the building's glazing to reduce its impact on birds, the Commission found the project architect's testimony persuasive that the potential adverse effect of the building's glazing on birds will be small because of the building's urban location, the low reflectivity of the glass, and because the glass covers only a small percentage of the building. The Commission therefore does not think it is necessary to include additional mitigation.
10. Regarding the ANC's suggestions that the Applicant use permeable and pliant paving materials, take certain actions with respect to the paving of Van Street, and enter into a construction management agreement, the Commission believes it would be inappropriate to include these as conditions of its approval. The Commission's authority in this case is limited to whether the Applicant has met the design review, special exception, and variance tests required by the Zoning Regulations, and any conditions of approval should be intended to mitigate identified adverse effects related to that review. Because these requests go beyond the scope of the Commission's review of this application, the Commission declines to include them as conditions of this Order.
11. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully

considered the OP report and, as explained in this decision, finds its recommendation to grant the applications persuasive. The Applicant included the additional bike parking that was recommended by OP, and revised its penthouse so that it conforms with the Act.

12. Based upon the record before the Commission, including witness testimony, the reports submitted by the Office of Planning, DDOT, and ANC 6D, and the Applicant's submissions, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under §§ 1604, 1605, 1607, and 1610 of the Zoning Regulations.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application consistent with this Order. The term "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under the order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under the order; however, that party remains liable for any violation of any condition that occurred while an Owner. This approval is subject to the following guidelines, standards, and conditions:

1. The approval of the proposed development shall apply to Lots 43 and 866 in Square 700.
2. The project shall be built in accordance with the Final Architectural Drawings, dated July 6, 2015, as modified by the guidelines, conditions, and standards below. (Ex. 23A).
3. The overall density on the site shall not exceed 9.5 FAR as permitted pursuant to § 1602 of the Zoning Regulations, and pursuant to the Zoning Commission's approval of this application.
4. **The Applicant shall implement the following transportation mitigation measure for the life of the project:** restrict northbound left turns on Van Street at M Street and install signage for a right-turn in, right-turn out ("RIRO").
5. **The Applicant shall implement the following Transportation Demand Management ("TDM") measures for the life of the project:**
 - (a) Provide 12 long-term bicycle parking spaces for the office building;
 - (b) Unbundle the cost of residential parking from the cost of lease or purchase;

- (c) Appoint TDM Leaders (for planning, construction, and operations) at the residential and office buildings. The TDM Leaders will work with residents in the building to distribute and market various transportation alternatives and options;
- (d) Dedicate two spaces in the residential garage for car sharing services to use with right of first refusal;
- (e) Provide reserved spaces in the office garage for carpools and van pools;
- (f) Provide a public transit information screen, showing real-time information on nearby transit services, in the residential and office building lobbies;
- (g) Install a minimum of 48 long-term secure bicycle parking spaces for access by office and retail employees or install a Capitol Bikeshare station and fund its first year of operations;
- (h) Install a minimum of six short-term bicycle parking spaces (three racks) within the building setback or public space near the office and retail entrances;
- (i) Provide showers and lockers to encourage bicycling among office and retail employees; and
- (j) Prohibit office and retail employees and retail customers from parking in the residential parking garage.

6. **The Applicant shall implement the following loading management measures for the life of the project:**

- (a) A loading dock manager will be designated by the building management (duties may be part of other duties assigned to the individual). He or she will coordinate with vendors and tenants to schedule deliveries to the loading dock, for 30 foot trucks (not delivery vans);
- (b) All deliveries will be permitted between 7:00 a.m. and 4:00 p.m., seven days per week, except when events occur at Nationals Park. Deliveries cannot be scheduled for the period between two hours when an event begins and one hour after an event is completed, including during the event itself (not including UPS/FedEx and similar deliveries);
- (c) Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20-Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT's

Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DOOT Truck and Bus Route Map (godcgo.com/truckandbusmap);

- (d) All tenants will be required to schedule deliveries that utilize the loading dock (any loading operation conducted using a truck 20 feet in length or larger);
- (e) The dock manager will schedule deliveries to ensure that the docks' capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time; and
- (f) A flagger will be present whenever a vehicle is entering or exiting the loading dock to ensure pedestrian, bicycle, and vehicle safety with truck back-in and exiting maneuvers.

7. The Applicant shall have flexibility with the design of the project in the following areas:

- To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the buildings;
- To vary the final selection of exterior materials within the color ranges provided (maintaining or exceeding the same general level of quality) as proposed, based on availability at the time of construction;
- To make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals; and
- To vary the exterior design and materials of the ground floor retail/service space based on the preferences of the individual tenant/occupant. The Applicant will not permit the individual tenant/occupant to modify the building footprint, or reduce the quality of the materials used on the exterior of the ground floor of the Project, as shown in the plans submitted with this application.

8. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.1 *et seq.* (the "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 identification, 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violations will be subject to disciplinary action.

On July 27, 2015, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application and **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and adopt; Marcie I. Cohen to approve and adopt by absentee ballot).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*, that is on August 21, 2015.