

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

**ZONING COMMISSION FOR THE
DISTRICT OF COLUMBIA**

**ZONING COMMISSION ORDER NO. 16-06A
Z.C. Case No. 16-06A
Jemal's Lazriv Water, LLC
(Design Review Modification of Significance @ Square 666, Lot 15)**

January 8, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on December 18, 2017, to consider an application filed by Jemal's Lazriv Water, LLC ("Applicant") for a modification of significance to a project approved pursuant to the Capitol Gateway Overlay District design review provisions of the 1958 Zoning Regulations of the District of Columbia ("1958 Zoning Regulations"),¹ Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The property that is the subject of this application is located at 1900 Half Street, SW (Square 666, Lot 15) ("Property"). The modification request was made pursuant to 11-Z DCMR § 704 of the 2016 Zoning Regulations. The hearing was conducted in accordance with the contested case provisions of 11-Z DCMR Chapter 4. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

Background Information

1. Pursuant to Z.C. Order No. 16-06, dated July 7, 2016, and effective on August 26, 2016, the Commission approved a design review application submitted under the then-applicable Capitol Gateway Overlay District design review provisions of the 1958 Zoning Regulations. The application proposed to renovate and adaptively reuse an existing office building on the Property into a mixed-use project comprised of residential and retail uses. The approval included a variance from the maximum building height requirements, a variance from the loading requirements, and special exception relief to provide multiple penthouses at multiple heights and penthouses that do not comply with the setback requirements from open court walls.
2. On August 28, 2017, the Applicant filed an application for a modification of significance to revise the penthouse plan approved in Z.C. Case No. 16-06 ("Original Application"). (Exhibit ["Ex."] 1-3.) The Original Application included architectural drawings of the

¹ The project that is the subject of this modification of significance was originally approved when the 1958 Zoning Regulations were in effect (Z.C. Order No. 16-06). On September 6, 2016, the 1958 Zoning Regulations were repealed and replaced by the 2016 Zoning Regulations. The repeal of the 1958 Zoning Regulations and the replacement with the 2016 Zoning Regulations has no effect on the validity of the Commission's prior decision and order regarding the project.

building's approved and proposed penthouses. The Original Application was deemed a modification of significance because it requested additional zoning relief for penthouse heights and setbacks.

3. On October 13, 2017, the Applicant submitted a letter and updated architectural drawings amending the Original Application ("Revised Application"). (Ex. 8.) The Revised Application requested additional modifications to the overall building design and program, including (i) a reduction in the number of approved residential units; (ii) a reduction in the number of on-site vehicle parking spaces; (iii) a reallocation of interior amenity spaces, including a reduction in the floor area devoted to retail use and an increase in the floor area devoted to residential amenity space; and (iv) minor refinements to the approved building façade. The Revised Application included approved and proposed architectural drawings of the entire building, including the penthouse drawings previously submitted, all dated October 13, 2017 ("Modification Drawings"). (Ex. 8A.) Together the Original Application and the Revised Application, including the Modification Drawings, are hereinafter referred to as the "Modification Application."
4. On November 28, 2017, the Applicant filed a Prehearing Submission, which included an updated Zoning Tabulation chart, information on the project's consistency with the Buzzard Point Vision Framework + Design Review Guide ("Buzzard Point Guide"), an update on approvals for the Anacostia Riverwalk design; proposed language for the project's design flexibility; an update on community engagement; and the resumes of witnesses that the Applicant would proffer as experts at the public hearing. (Ex. 11.)
5. On December 12, 2017, the Office of Planning ("OP") submitted a report in support of the Modification Application subject to the following: (i) the Applicant provides additional information regarding the design flexibility requested to phase construction of the northern penthouse mechanical screen wall; (ii) the Applicant further justifies the requested penthouse height relief; and (iii) the Applicant submits final design plans, as approved through the public space permitting process, for the Anacostia Riverwalk trail. (Ex. 12.)
6. Advisory Neighborhood Commission ("ANC") 6D, the ANC in which the Property is located, submitted two reports on the application. (Ex. 7 and 14.) The reports describe ANC 6D's three separate votes on the application, indicate the ANC's specific conditions to approval, and state that ANC 6D is "impressed with much of this project."
7. The National Capitol Planning Commission ("NCPC") submitted a report dated November 3, 2017, stating that the proposed modifications are consistent with the intent and requirements of Capitol Gateway design review and are not inconsistent with the Comprehensive Plan for the National Capitol or other federal interests. (Ex. 10.)
8. The Commission held a public hearing on the Modification Application on December 18, 2017. Parties to the case were the Applicant and ANC 6D. Proper notice of the hearing was provided by the Office of Zoning pursuant to 11-Z DCMR § 402.

9. Witnesses appearing at the hearing on behalf of the Applicant were Mr. Paul Millstein and Mr. Drew Turner of Douglas Development, and Mr. Kevin Sperry of Antunovich Associates Architects. The Commission indicated that Mr. Sperry had already been qualified by the Commission as an expert in architecture.
10. ANC Commissioner Roger Moffatt testified on behalf of ANC 6D at the public hearing. No individuals or organizations testified in support of or in opposition to the Modification Application.
11. On December 26, 2017, and as requested by the Commission at the close of the public hearing, the Applicant submitted a post-hearing submission that provided additional information on the project's consistency with the Buzzard Point Guide and proposed Findings of Facts and Conclusions of Law. (Ex. ____.)
12. At its January 8, 2018 public meeting, the Commission took final action to approve the Modification Application.

The Property

13. The Property consists of Lot 15 in Square 666. Square 666 is located in the southwest quadrant of the District and is bounded by T Street to the north, the Anacostia River to the east, U Street to the south, and Water Street and Half Street to the west. The Property is the only lot in Square 666 and has an angled rectangular shape with a total land area of approximately 110,988 square feet.
14. The Property is presently improved with an existing and mostly vacant nine-story office building that was constructed circa 1976. The existing building has a height of 90 feet and approximately 665,928 square feet of gross floor area with a density of 6.0 floor area ratio ("FAR"). On-site parking for 691 vehicles is located within the building, and exterior on-site loading is located on the Property to the north of the building. The building was originally constructed for use by the General Services Administration for Federal occupancy and was used as an office building for several decades.

Approved Project

15. In Z.C. Order No. 16-06, the Commission approved the adaptive reuse of the existing building as a mixed-use apartment house with approximately 427 residential units and approximately 24,032 square feet of retail use ("Approved Project"). In order to provide a high quality residential building and take full advantage of its location along the Anacostia River, the Approved Project incorporated two large river-facing courts that were created by removing approximately 215,217 square feet of gross floor area (1.9 FAR) from the existing building. The Approved Project resulted in an overall density of 4.06 FAR and maintained the building's existing height of 90' except for a new 2'-3" roof slab located on the center portion of the roof to reinforce the new rooftop mechanical equipment and amenity space, and a new 5' pool deck.

16. The Approved Project maintained two and a half levels of the building's existing parking garage with 312 parking spaces (300 zoning-compliant spaces and 12 tandem spaces), with ingress and egress from T Street, SW. On-site loading was approved in its existing location along T Street, adjacent to the parking garage entrance, such that all vehicular access would be consolidated on the north side of the Property.
17. In Z.C. Order No. 16-06, the Zoning Commission approved variances and special exception relief from the 1958 Zoning Regulations. The approved zoning relief included (i) a variance from the maximum building height requirements (11 DCMR § 1603.4); (ii) a variance from the loading requirements (11 DCMR § 2201.1); and (iii) special exception relief to provide multiple penthouses (11 DCMR § 411.6), penthouses with multiple heights (11 DCMR § 411.9), and penthouses not setback from the open court walls (11 DCMR § 411.18(c)(5)).
18. Pursuant to 11-A DCMR § 102.3(a), the Approved Project, including the approved zoning relief, is vested and subject to the provisions and requirements of the 1958 Zoning Regulations. Pursuant to 11-A DCMR § 102.4 of the 2016 Zoning Regulations, the proposed modifications to the vested project are required to conform with the 2016 Zoning Regulations as the 2016 Zoning Regulations apply to those modifications. The Modification Drawings approved by this Order conform to the 2016 Zoning Regulations in every aspect except for the relief previously granted in Z.C. Order No. 16-06 and where additional relief is being requested herein for penthouse heights and setbacks on certain areas of the roof, far removed from any street frontages.

Modifications to the Approved Project

19. As shown on the Modification Drawings, the Applicant requested the following modifications to the Approved Project: (i) modifications to the building's approved roof plan; (ii) a reduction in the total number of residential units; (iii) a reduction in the total number of on-site vehicle parking spaces; (iv) a reallocation of interior spaces and uses, resulting in additional floor area devoted to residential amenity space and less floor area devoted to retail space; and (v) modifications to the building's façade.
20. The Applicant requested additional special exception relief pursuant to 11-C DCMR § 1500.9 and 11-C DCMR § 1502.1(c)(5) to provide penthouses with multiple heights and penthouses that are not setback from the open court walls; and a variance from the penthouse height requirements of 11-K DCMR § 505.5. Pursuant to 11-K DCMR § 512.7 and 11-X DCMR § 603.3, the Commission may hear and decide requests for special exception and variance relief together with an application for design review.
21. As set forth below, based on the testimony provided at the public hearing and the materials submitted to the record, the Commission finds that the proposed modifications are reasonable, comply with the applicable standards in the 2016 Zoning Regulations, and are consistent with the Buzzard Point Guide. Moreover, the Commission finds that the Applicant meets the burden of proof for the special exception relief and variances requested. Therefore, the Commission approves the Modification Application for the

reasons described herein.

Modifications to the Penthouse

22. The modifications to the building's approved roof plan result from three major changes: First, the Applicant's desire to maintain the building's existing mechanical penthouse structure and elevator shafts, which were previously proposed to be demolished and rebuilt. Second, to provide elevator access to the roof via one of the existing elevators and existing elevator shafts. Third, to replace the building's HVAC system with new VRF heat pumps. As shown on the Modification Drawings, these proposed deviations from the Approved Project create three separate penthouse structures on the roof.
 - a. The largest penthouse is in the center wing of the building (the "Center Penthouse"). The Center Penthouse will include the existing penthouse structure, converted to contain elevator mechanical equipment, storage and trash rooms, restrooms, the existing elevator shafts, and one existing stair tower. The existing structure is currently 16'-9.5" tall and will be increased to 17'-10' tall to comply with current building code insulation standards. The existing structure will also include a 20' tall portion to enclose a single elevator that will provide access to the roof via the existing elevator and elevator shaft. Connected to the existing structure, also within the Center Penthouse, is a newly constructed residential amenity lounge (12' tall above the reinforced roof slab), a screen wall enclosing the VRF heat pumps and other mechanical equipment (14'-3" tall above the existing roof), and a screen wall enclosing a code-required stair pressurization fan (6' tall above the existing roof).
 - b. On the building's north wing is a second penthouse that will contain one existing stair tower (12'-9" above the existing roof) and a screen wall enclosing additional VRF heat pumps and other mechanical equipment to bring the building into compliance with current building code requirements and provide exhaust for future ground floor retailers (11'-9" above the existing roof).
 - c. On the building's south wing is a third penthouse that will contain an existing stair tower (12'-9" above the existing roof) and a screen wall enclosing a stair pressurization fan (11'-9" above the existing roof).
23. The modified penthouse design requires the same special exception relief granted in Z.C. Order No. 16-06 to provide multiple penthouses, penthouses with multiple heights, and penthouses that are not setback from the open court walls. The Commission found that the Approved Project met the special exception burden of proof for these areas of relief in Z.C. Order No. 16-06, Findings of Fact Nos. 48-53.
24. The modified penthouse design requires additional zoning relief in three areas: (i) special exception relief to provide multiple penthouse heights because six separate penthouse heights are proposed instead of four separate penthouse heights approved; (ii) special exception relief from the penthouse setback requirements for the existing stair towers

that were approved to be flush with the court walls but are now proposed to extend 5'-10" into the building's open courts, as measured from the exterior wall (or 3'-7" measured from the overhang). Additional setback relief is also needed for the existing penthouse structure that is 17'-10" tall for the majority of the structure and 20' tall for the elevator, but is only setback 16'-3" from the court walls; and (iii) a variance from the penthouse height requirements, which permit a maximum penthouse height of 12 feet for habitable space and 15 feet for mechanical space, whereas heights of 17'-10" and 20' are proposed.

25. Penthouse Special Exception Relief. The Commission hereby approves the Applicant's request for special exception relief to provide multiple penthouses,² multiple penthouse heights that exceed the maximum penthouse height requirements, and penthouse that do not meet the setback requirements from the open court walls. Pursuant to 11-C DCMR § 1504 and 11-X DCMR, Chapter 9, special exception relief may be granted from the requirements of 11-C DCMR §§ 1500.6 through 1500.10 and § 1502, subject to the following considerations: (a) the strict application of the penthouse requirements would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes; (b) the relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall; (c) the relief requested would result in a roof structure that is visually less intrusive; (d) operating difficulties such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable; (e) every effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks; and (f) the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely. 11-C DCMR § 1504.
26. The Commission finds that the proposed penthouse configuration is consistent with the standards set forth in 11-C DCMR § 1504. Due to the nature of the existing building and the mechanical and elevator equipment therein, strict application of the penthouse regulations would result in a roof plan that would be unduly restrictive, prohibitively costly and unreasonable, and would result in inconsistencies with the current building code. The relief requested will allow for penthouses that are minimally intrusive and create a better rooftop design that will not affect the light and air of adjacent buildings. Thus, the Commission finds that the modified penthouse plan will not impair the intent and purpose of the penthouse regulations for reasons that are explained in further detail below.
27. Relief for Penthouses with Multiple Heights. The Commission approves the requested relief to provide multiple penthouse heights. The relief is needed due to the Applicant's

² Relief to provide multiple penthouses was granted in Z.C. Order No. 16-06. The modified roof plan includes fewer penthouses, such that additional relief is not required. However, the Commission's rationale and approval for providing multiple penthouses in Z.C. Order No. 16-06 is still applicable in this case.

desire to maintain the existing penthouse structure, elevators, and elevator shafts, which were previously thought to not be salvageable. However, after further examination, the Applicant determined that the elevators have a useful life of 20 to 30 years more and therefore should be maintained. The Commission finds that the Applicant could theoretically increase the heights of several of the penthouse elements to meet the highest proposed penthouse height and reduce the number of different penthouse heights (e.g. increase the mechanical screen wall heights or increase the existing stair tower heights). However, doing so would create additional and unnecessary massing on the roof and reduce the proposed penthouse setbacks. Doing either is contrary to the intent of the penthouse regulations and would result in the penthouses being more visible from the street and river. Moreover, three of the proposed penthouse heights are within 2.5' of each other (121.04', 122.08', and 123.54' in elevation) such that their height differences will be imperceptible.

28. Relief from the Penthouse Setback Requirements. The Commission approves the requested relief from the penthouse setback requirements. In Z.C. Order No. 16-06, the Commission granted relief for the three existing stair towers to not provide any setback from the court walls. The proposed new bump-outs into the courts for the north and south stair towers is a result of vertical ductwork that connects through all levels of the building and is needed for the stair pressurization system. This duct work cannot be located on the interior sides of the stair towers because it would conflict with the building layout in the residential units, residential corridors, and in the garage. Thus, to bring the building into compliance with the current building code standards and provide required stair pressurization for a residential building, the duct work must project into the new courts.
29. The Commission also grants relief to not provide a 1:1 setback from the court walls for the existing penthouse structure, including the new elevator pop-up. The 17'-10" height for the existing structure is a result of the existing stacked elevator mechanical equipment and overruns, which are located on top of the existing elevator shafts. Although the existing elevators do not currently provide access to the roof, the equipment and overruns for the elevators below require 17'-10" of vertical clearance to comply with current building code standards, even when sandwiched as close together as possible. The 20' height for the single elevator that will provide access to the roof is a result of the building's existing elevator equipment that will be reused, which collectively require a minimum height of 20'. Therefore, the Commission finds that the Applicant cannot reasonably reduce the height of the existing penthouse structure or proposed elevator pop-up while reusing the building's existing equipment, elevators, and elevator shafts.
30. The Commission notes that, theoretically, the Applicant could have demolished the existing structure and elevator equipment and constructed a new penthouse that meets the setback requirements (as was approved in Z.C. Order No. 16-06). However, the Commission concludes that requiring the Applicant to demolish the existing structures and equipment would add unreasonable cost to the renovations and would have unreasonably required the Applicant to destroy salvageable materials. The Commission also finds that the Applicant cannot reasonable extend the width of the three wings to reduce the non-compliant setbacks. This is because the building has columns spaced at

20' intervals, which can only sustain a minimal cantilever. Thus, extending the width of the wings by a few feet to the north and/or south to meet the setback requirement would require extending that width by almost 20', which would eliminate a substantial number of dwelling units and destroy the architectural character and environment created by the large, open courts facing the waterfront.

31. Based on the foregoing, the Commission concludes that strict application of the setback requirements would result in a roof plan that would be unduly restrictive, prohibitively costly and unreasonable, and would result in inconsistencies with the building code. The Applicant made every effort to ensure that all mechanical equipment, stair towers, and elevator penthouses are in compliance with the required setbacks. The only penthouse elements that are not setback 1:1 are those that are already existing in the building, and which will become exposed when the Applicant cuts out the open courts. The non-compliant penthouses are setback at least 1:1 from all front, rear, and side building walls, including river-facing walls, and only require relief along the internal court walls. Thus, the Commission concludes that setback relief will not result in any negative impacts, will not materially impair the intent and purpose of the penthouse regulations, and will not affect adversely the light and air of adjacent buildings.
32. Variance for Penthouse Height. Pursuant to 11-X DCMR § 603.3 and 11-X DCMR Chapter 10, the Applicant requested a variance from 11-K DCMR § 505.5, which limits the maximum permitted penthouse height in the CG-5 District to 12' and 15' for mechanical space. As measured from the roof on which they sit, the proposed penthouse heights range from 6' to 20'.
33. 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. As set forth below, the Commission finds that a variance from the penthouse height requirements meets the three-prong variance test and should be approved.
 - a. Exceptional Situation or Condition. This Commission previously found in Z.C. Order No. 16-06, Findings of Fact Nos. 39-40, that the Property is exceptional due to the presence of the existing office building. *See Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974) (stating that the phrase "exceptional situation or condition" applies not only to the land, but also to the existence and configuration of a building on the land). The existing building is exceptionally large, and much of its existing height, density, setbacks, core elements, elevators, shafts and equipment, stair towers, column spacing, and siting cannot be modified or redesigned without significantly altering or destroying the building's structural integrity. The Applicant proposes to remove a substantial amount of the building's gross floor area to provide appropriate massing, create enhanced public access points to the river, and maximize views

for the residential uses. In doing so, the Applicant proposes to maintain where possible the existing structure, including existing stair towers, elevator systems, structural columns, and penthouse structures, which directly impact the ability to comply with the penthouse height requirements.

- b. Resulting Practical Difficulty. The Commission finds that strict application of the penthouse height requirements would result in a practical difficulty by constraining the Applicant's ability to adaptively renovate and reuse the existing building, including the existing elevators, elevator shafts, elevator mechanical equipment, and overruns. The Center Penthouse includes two heights that are inconsistent with the maximum heights permitted by 11-K DCMR § 505.5. The existing penthouse is already non-conforming at 16'-9.5" in height. The Applicant will slightly increase that height to 17'-10" to comply with current building code standards. The Applicant will also create a 20' pop-up to allow one of the existing elevators in its existing shaft to provide elevator access to the roof. All other penthouse elements will comply with the 12' and 15' requirements. Requiring the Applicant to demolish the existing shafts through the building, replace all of the elevators, and demolish and replace the existing penthouse mechanical structure would result in a practical difficulty to the Applicant.
- c. Moreover, the existing penthouse height is consistent with the regulations in effect when the building was constructed, and is only now non-compliant as a result of the changes made to the penthouse regulations pursuant to Z.C. Order No. 14-13 (January 2016). After further investigation into the condition of the existing elevators and shafts, the Applicant determined that they could be refurbished and reused, rather than replaced as previously proposed, which allows the Applicant to retain and reuse the existing penthouse, elevator machine room, and overruns. The existing elevator machine room and overruns are sandwiched as close together as possible, such that the Applicant cannot reduce the structure's height to 15' without demolishing it altogether—which the Commission finds would defeat the purpose of preserving the building's existing elevator systems.
- d. The Commission also finds that providing elevator access to the roof using the building's existing elevators, shafts, and equipment is not possible without providing a 20' structure. The proposed height is based on the existing elevator cab and its overrun, the required hoist way beams, and the roof assembly, which together require a total penthouse height of 20'. Thus, the Commission finds that due to the existing structures and equipment within the building, it would be practically difficult for the Applicant to meet the penthouse height requirements of 11-K DCMR § 505.5.
- e. No Harm to the Public Good or Zone Plan. The Commission concludes that the requested variance can be granted without substantial detriment to the public good and without substantial impairment to the zone plan. The two portions of the main penthouse that do not comply with the penthouse height requirements are located in the center of the building and are significantly setback from all of the building's

exterior walls (front, rear, and side), except the court walls. The court walls are being created by the Applicant to establish a residential use for the existing office building. The Commission finds that due to their extensive setbacks from all surrounding streets and the river, the non-compliant penthouses will be extremely difficult to see from any location, including from the river, and therefore will not have any impact on the public good. Therefore, the Commission finds that the proposed non-compliant penthouse heights will not adversely affect surrounding properties and will not be a detriment to the public good or zone plan.

34. Based on the foregoing, the Commission concludes that the Applicant has met the three-prong variance test and hereby grants the requested relief to allow a penthouse that exceeds the maximum penthouse height requirements permitted in the CG-5 District.

Modifications to the Number of Dwelling Units

35. The Applicant proposes to increase the size of many of the residential units, which results in fewer total units being provided within the building (427 approved, compared to 415 proposed). Reducing the total number of units removes the project's smallest units and creates a greater number of larger unit types with more bedrooms. The total number of two- and three-bedrooms units increases from approximately 60 units (14% of the total units) in the approved project to approximately 106 units (25% of the total units) in the proposed project. The Applicant requested flexibility to increase or decrease the total number of residential units to plus or minus 10% from the 415 units proposed.
36. The requested modifications to the number of dwelling units does not require additional zoning relief. Nevertheless, the Commission approves the requested modification. Reducing the number of dwelling units and increasing the number of larger-sized units is fully consistent with the District's goal of providing housing for families. The Commission also finds that increasing or decreasing the approved number of units by plus or minus 10% is consistent with the District's goals of either providing more residential units, or providing fewer units but at larger sizes to accommodate families.

Modifications to the Number of On-site Parking Spaces

37. The Applicant proposes to reduce the total number of parking spaces within the building from 312 (approved) to 246 (proposed). The proposed number of parking spaces exceeds the minimum number of spaces required by the 2016 Zoning Regulations; however, the Applicant requests flexibility to reduce the total number of spaces so long as the number provided meets the minimum number of spaces required by 11-C DCMR Chapter 7.
38. The requested modifications to the number of parking spaces does not require additional zoning relief. Nevertheless, the Commission approves the Applicant's request to reduce the total number of parking spaces to 246 spaces, including the request to have the flexibility to further reduce the number of spaces so long as the total amount meets the minimum zoning requirement. Doing so is consistent with the Zoning Regulations and

will allow the Applicant to utilize the existing building in the most efficient manner possible.

Modifications to the Interior Layout and Retail Space

39. The Applicant proposes to reallocate the proposed interior layout and uses within the building, primarily to increase and improve the floor area devoted to residential amenity space and decrease the gross floor area devoted to retail space. Under the Approved Drawings, approximately 24,032 square feet was devoted to retail space. Under the Modification Drawings, approximately 16,542 square feet is devoted to retail space, and the remaining space is devoted to necessary residential amenities. The Applicant requests flexibility to adjust the amount of space devoted to retail so long as the adjustments do not impact the design of the building façade.
40. The revised interior layout also includes the following modifications: (i) increased the size of the trash room to accommodate future more sustainable trash types and disposal options, and a relocated the trash room from the P1 level to the ground level; (ii) revised the type of long-term bicycle racks (single rack instead of stacked), per DDOT's request, increased the number of long-term residential bicycle parking spaces, and relocated the residential bicycle parking location from the P1 level to the ground level for increased ease of use; (iii) added a small one-story element to the building in the south courtyard (second floor) to allow for a taller ceiling and better amenity space in this location; and (iv) filled in the previously-proposed second floor two-story retail area by maintaining the building's existing slab in this location to create additional residential units.
41. The Applicant also further developed the landscape design of the courtyards and the Riverwalk in conjunction with OP, the District Department of Transportation ("DDOT"), and the District Department of Energy and the Environment ("DOEE"), as shown on Sheets 9-10 and 43 of the Modification Drawings. The scope of the public space plan has not changed from the plan approved in Z.C. Order No. 16-06, and the Applicant has continued to work with the applicable District agencies to obtain necessary approvals. The updated Riverwalk plan, as approved by OP, was submitted to the record as part of the Applicant's Powerpoint presentation (Ex. 15, pp. 11).
42. The requested modifications to the interior layout or landscape and Riverwalk plans do not require additional zoning relief. Nevertheless, the Commission approves the requested modifications. As testified to by the Applicant at the public hearing, the proposed residential building needs additional amenity space to remain competitive within the residential market. Given the existing building and the Property's location relating to retail use (two dead-end streets to the north and south, the Anacostia River to the east, and Half and Water streets to the west that separate the Property from Pepco facilities), it would be exceptionally difficult to locate more retail space in the building that would be successful. The Commission finds that the Applicant has maximized the amount of retail based on the anticipated market conditions, and has located the proposed retail space at the northwestern-most portion of the building where the majority of pedestrian activity is expected to take place. Moreover, the Commission finds that the

residential amenity space proposed for the ground floor will include active and interesting uses, such as co-working rooms and gym facilities, which will help to create a vibrant and active ground floor retail presence along the entire building frontage, much in the same way that retail use is expected to do. Finally, the Commission finds that the amount of retail space proposed is consistent with the Buzzard Point Guide, which recommends “over 15,000 square feet of retail space” for the Property. At approximately 16,542 square feet of retail space proposed, the Commission concludes that the modification to reduce the amount of retail in the building is fully consistent with the District’s goals for the Property and is an appropriate modification for the project.

Modifications to the Façade Design

43. As shown on the Modification Drawings, the Applicant proposes the following modifications to the building façade: (i) add glass canopies above the residential and retail entrances along Water Street; (ii) incorporate a brick masonry finish at the first two-stories; (iii) incorporate operable windows at the residential units; (iv) remove the trellises on the private terraces facing east on floors 7 and 9; (v) replace the panelized rain screen for the stair enclosures facing the courtyards with metal panels; (vi) provide a matte grey finish for the penthouses’ metal paneling and mechanical screens; and (vii) remove the inset balconies for the smallest residential units not facing the river, and replace them with interior living space to create larger and more functional units.
44. The requested modifications to the façade design do not require additional zoning relief. Nevertheless, the Commission approves the request because doing so will increase the building’s aesthetic and more appropriately adaptively reuse the existing structure. The Commission finds that the balconies proposed to be removed were small, had marginal use capacity, and limited the amount of light that could reach the units’ living areas. The revised unit layouts with no balconies bring the windows closer to living areas, increase the size of the living areas, and create a more functional interior layout. Given the extensive indoor and outdoor residential amenities in the building, the addition of operable windows, and the ability to have a better unit layouts and increased light, as well as the Applicant’s testimony regarding the benefits of removing the balconies at the public hearing (*see* Applicant’s Powerpoint presentation at Ex. 15, pp. 7-8), the Commission concludes that removing individual unit balconies in the locations shown on the Modification Drawings is an overall benefit to the project.

Design Flexibility

45. In addition to the flexibility granted in Z.C. Order No. 16-06, the Applicant requested the following flexibility with respect to the design of the modified project:
 - a. To provide a range in the number of residential dwelling units of plus or minus 10% from the number depicted on the architectural drawings approved in Z.C. Order No. 16-06A;
 - b. To vary the garage layout and the number, location, and arrangement of vehicle

parking spaces, provided the total number of parking spaces is not reduced below the number of spaces required under 11-C DCMR Chapter 7;

- c. To vary the final design of retail frontages, including the location and design of entrances, show windows, and size of retail units, in accordance with the needs of retail tenants, and to vary the types of uses designated as “retail” use on the approved architectural drawings to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j));
- d. To vary the location and design of the ground floor components to comply with any of the applicable District of Columbia laws and regulations and to accommodate any specific tenant requirements, and to vary the size of the retail area; and
- e. To construct the northern portion of the proposed 11’-9” tall penthouse screen wall located on the northern portion of the building before constructing the southern portion of that same screen wall, in order to best accommodate the mechanical needs of future retail tenants.

Compliance with Design Review Requirements

- 46. Pursuant to 11-X DCMR § 604.1, the Zoning Commission evaluates and approves or disapproves a design review application according to the standards of 11-X DCMR § 604 and the applicable standards of Subtitle K. Pursuant to 11-K DCMR §§ 512.1(a) and 512.2, properties within the CG-5 Zone District, and all proposed uses, buildings, and structures, or any proposed exterior renovation to any existing building or structure that would result in an alteration of the exterior design, is subject to review and approval by the Zoning Commission in accordance with 11-K DCMR §§ 512.3. Pursuant to 11-K DCMR §§ 512.3, an applicant requesting approval under 11-K DCMR § 512 must also prove that the proposed building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will meet the requirements of 11-K DCMR § 500.1. Finally, 11-K DCMR § 512.4 sets forth specific requirements that apply to all new buildings, structures, or uses within the CG-5 District. As described below, the Commission finds that the modified project is consistent with the applicable design review standards.

Compliance with General Design Review Standards (11-X DCMR § 604)

- 47. The Commission finds that the modified project meets the design review standards of 11-X DCMR § 604. The Commission finds that the modified project is not inconsistent with the Comprehensive Plan and with other adopted public policies, since the project is to replace an existing, mostly vacant office building with significant new residential units, including large units for families. The project is located at an infill site, and will adaptively reuse the existing building, thus bringing the Property into compliance with

all current building code requirements and meeting all applicable stormwater and GAR requirements. Moreover, the project will provide new ground floor retail to serve residents and visitors of the Buzzard Point neighborhood. (11-X DCMR § 604.6).

48. The Commission also finds that the modified project is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring property. With the exception of the requested penthouse relief and the previously-approved building height and loading variances, the project complies with all other applicable zoning requirements. The Commission finds that the requested relief will have no adverse impacts on surrounding property and will not impair the purpose or intent of the Zoning Regulations. As set forth below, the Commission also finds that the project is consistent with the design requirements set forth for buildings in the CG-5 District. (11-X DCMR § 604.6).
49. The Commission finds that the building's street frontages have been designed to be safe, comfortable, and inviting to pedestrian activity, and that the modified project includes ground floor retail uses with distinct entryways and separate entrances for the residential use. The project also includes significant streetscape improvements, including new sidewalks and landscaping, and all public space improvements, including the width of the sidewalks, will comply with DDOT standards. Moreover, the Applicant minimized blank facades on the renovated building. (11-X DCMR § 604.7(a)).
50. The Project includes well-designed new gathering spaces and open spaces, including the construction and extension of the Riverwalk and a dog park to the north of the building. The Commission finds that these spaces will be inviting to the public, easily accessible, and appropriate for the Property's unique location. (11-X DCMR § 604.7(b)).
51. The Property is not located along one of the District's major boulevards. However, the Commission finds that the public space improvements will enhance the existing urban form. The Project does not infringe on any key landscape vistas or axial views of landmarks and important places, and the building's massing along the river will be improved following the proposed renovations. Thus the Commission finds that the building's alteration will have no detrimental impact on views and vistas. (11-X DCMR § 604.7(c)).
52. The Commission finds that the pedestrian realm surrounding the Property will be reinforced through the provision of active ground floor retail and residential amenity spaces with clear inviting windows, outdoor seating, the extended Riverwalk, the dog park, and an overlook at the terminus of the Riverwalk and T Street. Moreover, the building will be re-clad in high quality materials that will significantly enhance the building's design and aesthetic from the surrounding streets and from the river (11-X DCMR § 604.7(d)).
53. The Commission finds that the Project includes significant sustainable landscaping features, such as native vegetation that promotes biodiversity, a green roof, strategic plant selections and site irrigation, and high quality stormwater management and bio-retention

systems. (11-X DCMR § 604.7(e)).

54. The Commission finds that the Project has been designed to promote connectivity both internally and within the surrounding neighborhood. Vehicle parking and loading will be accessed along the north side of the Property, with pedestrian entrances into the building located along Water Street. Pedestrians and bicyclists will access the Riverwalk from T Street to the north and from the extended Riverwalk to the south. The Project incorporates significant long- and short-term bicycle parking facilities for residents, employees, and retail customers, and electric vehicle charging spaces in the garage. Thus, the Commission finds that redevelopment of the Property will result in significantly better integration into the surrounding street system, through the upgrading of surrounding sidewalks, the planting of trees, and significant improvements to the public realm consistent with DDOT standards. 11-X DCMR § 604.7(f)).

Compliance with the Zoning Commission Review of Buildings, Structures, and Uses in the CG Zones (11-K DCMR §§ 512 and 500.1)

55. The Commission finds that the project will help achieve the objectives of the Capitol Gateway defined in 11-K DCMR § 500.1. The project will help assure development of the area with a mixture of residential and retail uses, and with a suitable height, bulk, and design, as generally indicated in the Comprehensive Plan and recommended in the Buzzard Point Guide. (11-K DCMR § 500.1(a)).
56. The Commission finds that the project encourages a variety of support and visitor-related uses through development of new retail uses that will increase visibility and walkability to the Property. Construction of the Riverwalk will draw visitors to the area to take advantage of recreational opportunities and views of the river that were not previously available. Safe pedestrian and bicycle connections to the surrounding streets will be provided through the implementation of new sidewalks, bicycle lanes, street furniture, pedestrian-oriented lighting, crosswalks, and landscape buffers. (11-K DCMR § 500.1(b)).
57. The project provides an appropriate massing along the Anacostia River and includes significant step-backs and height step-downs to maximize views and create an aesthetically pleasing design. The Commission finds that the project includes continuous public open space along the waterfront through the creation of the Riverwalk, with ample space for pedestrians, cyclists, and landscape elements. (11-K DCMR § 500.1(d)).
58. The modified project will help achieve the objectives of the Capitol Gateway district because the project is 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. Thus, the Commission finds that the project assures development of Buzzard Point with a mixture of uses and a suitable height, bulk, and design. (11-K DCMR § 512.3(a)).
59. The Commission finds that the project will help achieve the desired use mix with

- proposed residential, retail, and service uses at the Property. (11-K DCMR § 512.3(b)).
60. The Commission finds that the height, bulk, and architectural design of the building will be in harmony with the surrounding neighborhood and will improve the adjoining street patterns and circulation. The renovated building provides distinct façade articulation at each elevation and creates an innovative design that connects the building to the surrounding street frontages and the Anacostia River. The Applicant will provide new streetscape improvements on T Street, Half Street, and Water Street, which will support pedestrian and bicycle infrastructure where none currently exist and which will be consistent with the vision for the streetscape set forth in the Buzzard Point Guide. Moreover, the approved design and construction of the Riverwalk will help guide future development to this portion of the southwest waterfront. (11-K DCMR § 512.3(c)).
 61. The Commission finds that the project will minimize potential conflicts between vehicles and pedestrians. Consolidated access for parking and loading will be located on the north side of the Property, which eliminates the existing parking access point at the south side of the Property and reduces the width of the existing curb cut on the north side of the Property. Trash operations will occur from the loading area. All loading and trash trucks will access the loading docks without negatively impacting public space between the docks and the nearest DDOT-designated truck routes. Trucks will be able to make front-in and front-out maneuvers. In addition, a two-way separated cycle track will connect T Street to the Riverwalk on the north side of the building, which will minimize potential bicycle conflicts with parking and loading operations. (11-K DCMR § 512.3(d)).
 62. In reviewing the Modification Drawings, the Commission finds that the redesigned building will minimize unarticulated blank walls adjacent to public spaces by offering extensive façade articulation across every elevation. Each façade is distinctly and extensively conveyed through irregular patterns and a mixture of materials, fenestration, and colors. (11-K DCMR § 512.3(e)).
 63. The project will be designed with sustainability features and will achieve LEED-Gold v. 2009 for new construction. Thus, the Commission finds that the building will not have adverse impacts on the natural environment. (11-K DCMR § 512.3(f)).
 64. The Commission finds that the project incorporates suitably designed public open spaces along the waterfront that are inviting to the public, easily accessible, and particularly appropriate for the Property's unique location. For example, the Applicant is redeveloping a portion of the Riverwalk that is accessed to the north and south of the Property, and is also providing a dog park so that building residents have a convenient and aesthetically pleasing location to let their dogs run. (11-K DCMR § 512.4(a)). The architectural drawings approved in Z.C. Case No. 16-06 include plans showing open space treatments, public space access, and use of the Riverwalk (11-K DCMR § 512.4(b)), and a view analysis that assesses the views and vistas set forth in 11-K DCMR § 512.4(c). The Commission concludes that because the building's height and mass already exist along the river and Half Street/Water Street, the proposed alterations will have no detrimental impact on the views and vistas of the identified monumental properties and focus areas.

OP Report

65. By report dated December 12, 2017, OP recommended approval of the application subject to the following conditions: (i) the Applicant provides additional information regarding the design flexibility requested to phase construction of the northern penthouse mechanical screen wall; (ii) the Applicant further justifies the requested penthouse height relief; and (iii) the Applicant submits final design plans, as approved through the public space permitting process, for the Anacostia Riverwalk trail. (Ex. 12.)
66. At the public hearing, the Applicant clarified the area of the mechanical penthouse for which it requested design flexibility to phase construction. The Applicant also provided testimony regarding the need for the penthouse height relief based on the existing penthouse structure, elevators, shafts, and equipment. Finally, the Applicant submitted a plan showing the final, approved Riverwalk design (*see* Ex. 15, p. 11). At the public hearing, OP stated that the Applicant had adequately addressed all of its outstanding questions and that it was in full support of the application.

ANC Report

67. By report dated September 12, 2017, ANC 6D indicated that at its September 11, 2017 public meeting, ANC 6D voted to support the application subject to the Applicant upholding the commitments it made to ANC 6D in Z.C. Case No. 16-06, which were to provide ten affordable housing units at 60% of the area medium income for ten years; provide a 3,200 square foot dog park on the Property; and work with the ANC to establish an appropriate construction management plan. At the time that the ANC took its vote on September 12, 2017, the Applicant had not yet submitted the Revised Application that included modifications to the project other than to the penthouse.
68. By report dated December 12, 2017, ANC 6D indicated that on November 13, 2017, ANC 6D voted to withhold support for the Revised Application due to the reduction in the amount of retail space and the Applicant's request to provide an increase or decrease of 10% in the number of residential units and parking spaces. The ANC's December 12, 2017 report also stated that at its December 11, 2017 public meeting, ANC 6D voted to rescind its November 13, 2017 vote and reaffirm its September 11, 2017 vote, provided that the Applicant would agree to uphold the commitments it made to the ANC in Z.C. Case No. 16-06 and increase the amount of retail space. The ANC left the matter of 10% flexibility on the number of units and parking spaces to the discretion of the Zoning Commission.
69. On December 26, 2017, at the request of the Zoning Commission at the public hearing, the Applicant submitted a post-hearing submission addressing the ANC's stated concern about the adequacy of retail space in the project. The Applicant's post-hearing submission relied on the Buzzard Point Guide, which recommended that the Property provide approximately 15,000 square feet of retail. With approximately 16,524 square feet of retail proposed, the Commission finds that the project is consistent with the District's vision for the Property as set forth in the Buzzard Point Guide.

CONCLUSIONS OF LAW

1. The application was submitted pursuant to 11-Z DCMR § 704 for a modification of significance, and pursuant to 11-X DCMR Chapter 6 and 11-K DCMR § 512 for design review of a project located in the CG-5 Zone District. The Commission required the Applicant to satisfy all of the applicable requirements set forth in 11-Z DCMR § 704, 11-X DCMR Chapter 6, and 11-K DCMR § 512, and 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 Property.
3. The modified project is within the applicable height, bulk, and density standards for the CG-5 Zone District and will not tend to affect adversely the use of neighboring property. The modified project is also in harmony with the general intent and purpose of the Zoning Regulations and Zoning Map.
4. The Commission concludes that the modified project will further the objectives of the Capitol Gateway set forth in 11-K DCMR § 500.1 and will promote the desired mix of uses set forth therein. The design of the renovated building also meets the purposes of the Capitol Gateway and the specific design requirements of 11-K DCMR § 512.
5. No persons or parties appeared at the public hearing in opposition to the application.
6. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (DC. 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, as well as its conditions to approval, and concurs in its conclusion to support the granting of the application. As was the case in Z.C. Order No. 16-06, the Commission believes that it would be inappropriate to include as conditions to this Order the ANC's requests to incorporate affordable housing into the project, provide an on-site dog park, and establish a construction management plan. 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 to approval should be intended to mitigate identified adverse effects related to that review. Because the ANC's requests go beyond the scope of the Commission's review of this application, the Commission declines to include them as conditions of this Order.
7. The Commission does not agree with the ANC that additional retail space should be provided in the building. The Applicant has made a compelling case for why additional residential amenity space is needed on the ground floor of the building, and why additional retail space would not be supported by the market. The Commission also finds that the proposed residential amenity space will create an active streetscape along the

building's frontage, thus establishing the type of vibrant public space that retail uses are intended to create. Finally, the Commission believes that the amount of retail proposed is fully consistent with the intent and purposes of the Capitol Gateway set forth in the Zoning Regulations, and with the District's vision for the Property and the Buzzard Point neighborhood in general as set forth in the Buzzard Point Guide.

8. 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's recommendations. The Commission carefully considered the OP report in this case and finds its recommendation to grant the application persuasive. As stated by OP at the public hearing, the Applicant satisfactorily addressed OP's three outstanding questions noted in its report at the public hearing.
9. Based upon the record before the Commission, including witness testimony, the reports submitted by OP and ANC 6D, and the Applicant's written submissions to the record, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under 11-X DCMR Chapter 6 and 11-K DCMR § 512.

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. Approval of the project shall apply to Lot 15 in Square 666.
2. The project shall be built in accordance with the architectural drawings submitted in the record of Z.C. Case No. 16-06, dated June 20, 2016 (Ex. 29), as modified by the architectural drawings submitted in the record of Z.C. Case No. 16-06A, dated October 13, 2017 (Ex. 8A), as further modified by the Riverwalk Plan shown in the Applicant's Powerpoint presentation (Ex. 15, p. 11), and as modified by the guidelines, conditions, and standards below.
3. The Applicant shall implement the transportation demand management and transportation mitigation measures set forth in Decision Nos. 3 and 4 of Z.C. Order No. 16-06.
4. The project shall be designed to include at least the minimum number of points necessary to achieve LEED-Gold v.2009 for New Construction.
5. The Applicant shall have flexibility with the design of the project in the following areas:

- a. 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;
 - b. 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;
 - c. 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;
 - d. To vary the sustainable features of the project, provided the total number of LEED points achievable for the project does not decrease below the LEED-Gold certification;
 - e. To provide a range in the number of residential dwelling units of plus or minus 10% from the number depicted on the architectural drawings approved in Z.C. Order No. 16-06A;
 - f. To vary the garage layout and the number, location, and arrangement of vehicle parking spaces, provided the total number of parking spaces is not reduced below the number of spaces required under 11-C DCMR Chapter 7;
 - g. To vary the final design of retail frontages, including the location and design of entrances, show windows, and size of retail units, in accordance with the needs of retail tenants, and to vary the types of uses designated as “retail” use on the approved architectural drawings to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j));
 - h. To vary the location and design of the ground floor components to comply with any of the applicable District of Columbia laws and regulations and to accommodate any specific tenant requirements, and to vary the size of the retail area; and
 - i. To construct the northern portion of the proposed 11’-9” tall penthouse screen wall located on the northern portion of the building before constructing the southern portion of that same screen wall, in order to best accommodate the mechanical needs of future retail tenants.
6. 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. (“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 January 8, 2017, upon the motion of _____, as seconded by _____, the Zoning Commission **APPROVED** the application and **ADOPTED** this Order at a special public meeting by a vote _____.

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*, that is on _____.