



August 10, 2018

Meridith Moldenhauer

Direct Phone 202-747-7070
Direct Fax 202-683-9390
mmoldenhauder@cozen.com

Zoning Commission of the District of Columbia
441 4th Street, NW, Suite 200S
Washington, DC 20001

**RE: Application for Zoning Commission Design Review – 1530 First Street SW
(Sq. 656, Lot 53)**

Dear Members of the Zoning Commission:

This firm represents TM Jacob LLC (the “Applicant”), the owner of property located at 1530 First Street SW (Square 656, Lot 53) (the “Property”). On behalf of our client, we hereby submit an application for design review to the Zoning Commission (the “Commission”). As required under Subtitle Z § 301, enclosed please find the following:

- Letter of authorization
- Surveyor’s Plat
- Zoning map
- Applicant’s preliminary statement
- Detailed architectural plans
- List of property owners within 200 feet of the Property
- Notice of Intent Certification
- Filing fee payable to the DC Treasurer amounting to \$6,789.69

We believe the application is complete and respectfully request the Zoning Commission schedule a public hearing on the application at its earliest available date.

Sincerely,

COZEN O'CONNOR

Meridith H. Moldenhauer

Certificate of Service

I hereby certify that on this 10th day of August, 2018, a copy of this application for design review was served, via email, as follows:

District of Columbia Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024
planning@dc.gov

District Department of Transportation
55 M Street SE, Suite 400
Washington, DC 20003
Anna.chamberlin@dc.gov

Advisory Neighborhood Commission 6D
c/o Meredith Fascett, Chairperson
6D07@anc.dc.gov

Advisory Neighborhood Commission 6D06
c/o Rhonda N. Hamilton, SMD Commissioner
6D06@anc.dc.gov



Meridith H. Moldenhauer

**BEFORE THE DISTRICT OF
COLUMBIA ZONING COMMISSION**

**Application of TM Jacob LLC
1530 First Street SW (Square 656, Lot 53)**

**APPLICATION FOR DESIGN
REVIEW IN THE CG-4 DISTRICT**

I. BACKGROUND

A. The Applicant and Property

This application is submitted by TM Jacob LLC (the “Applicant”), on behalf of the owner of property located at 1530 First Street SW (Square 656, Lot 53) (the “Property”). Based upon a subdivision plat issued in 2004 by the Office of the Surveyor, the Property has a land area of 13,032 square feet. *See* subdivision plat at **Exhibit A**. The Property is located approximately mid-block on the east side of First Street SW between P Street SW to the north and Q Street SW to the north in the southwest quadrant of the District. First Street SW is 90 feet wide. As indicated on the DC zoning map, the Property is zoned CG-4. *See* zoning map at **Exhibit B**. According to the Property Information Verification System (“PIVS”), the Property is presently improved with a former private school building and is currently vacant.

The Property is located two blocks west of South Capitol Street. To the north is a series of three-story apartment buildings. To the south is 1542-1550 First Street SW, approved under ZC 17-13 in 2017 for construction of a mixed-use building of 100 feet in height (“Phase I”). *See* architectural plans at ZC 17-13 Exhibits 31A1-31A4. Fort McNair is located approximately two blocks to the west of the Property. Nationals Stadium is also approximately two blocks northeast of the Property and the area in between the stadium and the Property includes a mix of commercial and residential uses. The area south of Q Street includes numerous industrial uses, vacant properties, single-family row houses, the Pepco Waterfront Substation, and Audi Field.

B. The Proposed Development

As shown on the architectural drawings included with this application, the Applicant proposes to redevelop the Property with approximately 101 affordable residential units, comprised of 1-bedroom, 2-bedroom, 3-bedroom, and 4-bedroom units with ground floor commercial uses from one or more preferred CG zone uses¹ (the “Project”). Eighty percent of the dwelling units will be reserved for households with incomes not exceeding 50% of the area median income (“AMI”) and 20% of the units will be reserved for households with incomes not exceeding 30% AMI.

The United Planning Organization will provide on-site wrap-around services, such as case

¹ Subtitle K § 509.2

management, for the building's residents who have been referred through the Coordinated Entry System, and off-site services will be included in the following areas:

- Mental health
- Addiction treatment
- Childcare
- Job readiness programs
- Job training
- Adult education

The Project includes approximately 102,155 square feet of gross floor area (approximately 7.8 FAR). Approximately 83,223 square feet gross floor area will be devoted to residential use and approximately 7,698 square feet of gross floor area will be devoted to ground floor commercial uses. One commercial space entryway will be located along First Street SW and one residential entry will be located along First Street SW as well. The Project also includes a courtyard and an approximately 1,336 square foot residential amenity space on the second floor for the building residents.

The Applicant will provide 27 below-grade parking spaces, which will be accessible from a 16-foot wide alley network to the rear of the Property that leads out to Q Street SW and Half Street SW. Loading, for which certain zoning relief as described below is requested, is oriented at the rear of the Project. The building will have a maximum height of 100 feet and will include a penthouse containing both habitable and mechanical space. The habitable penthouse level will have a maximum height of 10 feet, 3 inches, which includes a parapet. The maximum height of the penthouse as measured to the top of the mechanical space screening is 16 feet, 7 inches. The penthouse will be set back at least 1:1 to the front (10 feet, 3 inches), rear (10 feet, 3 inches), and north side (10 feet, 8 inches) as required by the Zoning Regulations. No penthouse setback is required to the south side.

The CG Zone Districts require review by the Zoning Commission for any proposed use, building, structure, or exterior renovation to any existing building or structure that would result in an alteration of the exterior design, for any properties located in Square 656.² The design review process provides for flexibility from certain development standards as described in Subtitle X § 603.1. Accordingly, the Applicant will request flexibility from the Zoning Commission for the development standards pertaining to lot occupancy for residential use (Subtitle K § 504.6) and courts (Subtitle K § 504.10). The application also includes a request for a variance from the loading requirements of Subtitle C § 901.1 of the Zoning Regulations. The Zoning Commission is authorized to approve such relief pursuant to Subtitle K § 512.7 and Subtitle X § 603.3. Following herein is a preliminary statement indicating how the Applicant meets its burden of proof.

² Subtitle K §§ 512.1(e) and 512.2

II. DESIGN REVIEW APPROVAL

A. Capitol Gateway Zones Design Review Requirements

Pursuant to Subtitle K § 512.1(e) the proposed development of the Property is subject to design review and approval by the Zoning Commission. *See* Subtitle K § 512.2. The Applicant must prove that the proposed building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will:

512.3(a) Help Achieve the Objectives of the Capitol Gateway;

The Project satisfies the following stated objectives for the Capitol Gateway zones as provided in Subtitle K § 500.1 including: (i) assuring development of the area with a mixture of residential and commercial uses, and a suitable height, bulk, and design of buildings, as generally indicated in the Comprehensive Plan and recommended by planning studies of the area; (ii) encouraging a variety of support and visitor-related uses, such as retail and service uses; and (iii) providing for a reduced height and bulk of buildings along the Anacostia riverfront in the interest of ensuring views over and around waterfront buildings, and provide for continuous public open space along the waterfront with frequent public access points.

The Project will provide approximately 83,223 square feet of gross floor area devoted to new residential use, all of which will be reserved for households with incomes not exceeding 50% of the AMI. In addition, approximately 7,698 square feet of gross floor area will be devoted to new ground floor commercial uses in a vibrant and attractive new building. The building will have a maximum height of 100 feet and an overall FAR of up to 7.8, both of which are permitted as a matter of right in the CG-4 Zone District.

The Applicant has discussed the Project with the Office of Planning, including the height, bulk, use, and projections into public space. The Applicant intends to discuss the Project with the District Department of Transportation (“DDOT”) and provide rationale relating to the difficulty in providing the loading platform and 20-foot service/delivery space due to site constraints for the Project, as described in detail below.

512.3(b) Help achieve the desired use mix, with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail, or service uses;

The Project includes approximately 7,698 square feet of ground floor commercial uses and 101 affordable residential units. The ground floor commercial space will be sold to the property owner in connection with the transaction. Therefore, the commercial use will be owned and operated by a long-time Capitol Gateway stakeholder.

512.3(c) Be in Context with Surrounding Neighborhood and Street Patterns;

As shown on the architectural drawings included with the application, the Project is contextual to the surrounding neighborhood and street patterns, particularly in relationship to Phase I. Further, the Project is respectful of RF-1 zoned property to the north. The Applicant has taken steps to reduce the massing of the proposed building through projections, bays,

recesses, and material changes to help soften the juxtaposition between the proposed building, the existing immediate context, and the adjacent property to the north. Furthermore, the existing apartment building is located 29 feet from the Property's northern lot line, which includes an approximately 18-foot wide open drive aisle separating the buildings. Furthermore, the Project's proposed penthouse is setback approximately 20 feet from the northern property line, resulting in a separation of approximately 50 linear feet from the tallest part of the Project to the existing apartment building. The distinct façade articulations at each elevation creates an innovative, high-quality design that connects the building to the street frontage and complements nearby buildings.

Further, the Property is also located within the boundaries of the Buzzard Point Urban Design Framework Plan (the "Buzzard Point Plan"), which seeks to catalyze Buzzard Point's long-awaited economic revitalization and overcome its isolated, industrial character. *See* Buzzard Point Plan excerpted pages at **Exhibit C**, page 13. Improvements in the vicinity of the Property include the new South Capitol Street Bridge and Audi Field, which will initiate additional physical improvements and further development of Buzzard Point. *Id.* at page 14. The Property is directly adjacent to property identified in the Buzzard Point Plan for multifamily residential development. *Id.* at page 37. Moreover, one of the overarching goals of the Buzzard Point Plan is to create additional mixed-income and affordable housing opportunities within the study area. *Id.* at page 31. As a result, the Project is consistent with the Buzzard Point Plan and is in context with the street patterns and redevelopment plan for the surrounding area.

512.3(d) Minimize Conflict between Vehicles and Pedestrians;

As stated above, access to the loading area and below-grade parking will be provided via the 16-foot wide rear alley network to the Property, thereby preventing potential pedestrian and vehicle conflicts.

512.3(e) Minimize Unarticulated Blank Walls Adjacent to Public Spaces through Façade Articulation;

Except for the south building wall on the property line, the building offers extensive façade articulation across all of its elevations and includes projections that extend a maximum of four feet past the property line along the building's frontage. The facades are distinctly and extensively conveyed through irregular patterns and the building's materials, which include red and ironspot brick, fiber cement, wood, and metal paneling.

512.3(f) Minimize Impact on the Environment (LEED)

The Applicant is providing an expansive green roof and is pursuing LEED Silver certification for the Project, consistent with the Green Building Act requirements and Department of Community Development ("DHCD") requirements for the Project's funding.

B. General Design Review Requirements

In addition to the requirements of Subtitle K § 512.3, the Zoning Commission must also find that the Project is consistent with the general design review standards set for in Subtitle X of the Zoning Regulations.

604.5 The Zoning Commission shall find that the proposed design review development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.

The Project is not inconsistent with the Comprehensive Plan and with other adopted policies and active programs related to the Property. The Comprehensive Plan is described as “the centerpiece of a ‘Family of Plans’” that guide public policy in the District. *See* 10-A DCMR § 103.1. Under the DC Code, the Comprehensive Plan is the one plan that guides the District's development, both broadly and in detail. Thus it carries special importance in that it provides overall direction and shapes all other physical plans that District government adopts. In fact, all plans relating to the city's physical development should take their lead from the Comprehensive Plan, building on common goals and shared assumptions about the future. *See* 10-A DCMR § 103.2. As the guide for all District planning, the Comprehensive Plan establishes the priorities and key actions that other plans address in greater detail. The broad direction it provides may be implemented through agency strategic plans, operational plans, long-range plans on specific topics (such as parks or housing), and focused plans for small areas of the city. *See* 10-A DCMR § 103.3.

The purposes of the Comprehensive Plan are six-fold: (1) to define the requirements and aspirations of District residents and, accordingly, influence social, economic and physical development; (2) to guide executive and legislative decisions on matters affecting the District and its citizens; (3) to promote economic growth and jobs for District residents; (4) to guide private and public development in order to achieve District and community goals; (5) to maintain and enhance the natural and architectural assets of the District; and (6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District. D.C. Code §1-245(b). The Project significantly advances these purposes by promoting the social, physical and economic development of the District through the provision of a high-quality mixed-use project consisting of affordable housing for low and very low income District residents and ground floor neighborhood-serving commercial use on the Property, all without generating any adverse impacts.

The policies contained in the Comprehensive Plan are based on 36 Guiding Principles that acknowledge that the benefits and opportunities of living in the District are not available to everyone equally and that divisions in the city – physical, social and economic – must be overcome to move from vision to reality. *See* 10-A DCMR § 216.3. The Guiding Principles are derived from the Comprehensive Plan's “vision for growing an inclusive city,” and express cross-cutting goals for the District's future. *See* 10-A DCMR § 2004.4. The Guiding Principles are grouped into five core themes: Managing Growth and Change, Creating Successful Neighborhoods, Increasing Access to Education and Employment, Connecting the City, and Building Green and Healthy Communities. *See* 10-A DCMR § 216.2.

The Project will aid in managing growth and change by assisting the District in retaining and attracting an economically diverse population, including families, by providing new affordable housing in a rapidly revitalizing area of the District that is close to public transportation. *See* 10-A DCMR §§ 217.2-217.3. The Project also will support the District's non-residential growth through the proposed ground floor commercial use that will generate tax

revenue and create jobs and opportunities for less affluent households to increase their income. *See* 10-A DCMR § 217.4. The Project will aid in the successful revitalization of the Buzzard Point neighborhood by ensuring that as this area of the District transforms from an industrial neighborhood to a vibrant, sought after mixed-use neighborhood it will include housing and services for low and very low income residents, including families, and will also provide employment opportunities through the proposed ground floor retail. *See* 10-A DCMR §§ 218.3-219.3. The Project will also advance the District's environmental goals through the use of sustainable design strategies and adherence to LEED v.4 design criteria. *See* 10-A DCMR § 221.3.

The substantive policies of the Comprehensive Plan are organized into 12 Citywide Elements that each address a specific topic that is citywide in scope, and ten Area Elements that focus on issues that are unique to a particular part of the District, and are intended to provide a sense of local priorities and to recognize the different dynamics at work in each part of the city. Although they focus on a specific area of the District, the policies contained within the Area Elements are still general in nature and do not prescribe specific uses or design details. *See* 10-A DCMR 104.4-104.6. The Area Elements also do not repeat policies that already appear in the Citywide Elements; however, this does not mean all Comprehensive Plan policies areas mutually exclude each other. On the contrary, the Comprehensive Plan specifically recognizes the overlapping nature among and between the Citywide and Area Elements, and that the policies in one element may be tempered by one or more of the other elements where there may be a need to balance competing policies.

The following sections of this report provide a brief discussion of the Project's consistency with each of the Citywide Elements, as well as the Lower Anacostia Waterfront / Near Southwest Area Element, the area element that includes the Property. Due to the wide range of topics addressed in the Comprehensive Plan, some Citywide Elements oftentimes are not necessarily applicable to a development project, or are applicable to only a minor degree. Such is the case for the Project where the Parks, Open Space, and Recreation; Community Services and Facilities; Infrastructure; and the Arts and Culture Elements have little to no applicability. Nonetheless, the Applicant still reviewed the overarching goal and the policies of these elements to confirm that the Project was not inconsistent. For the remaining Citywide Elements that are more directly applicable to the Project, a brief narrative is provided explaining the basis for the Applicant's finding that the Project is not inconsistent with that particular element.

Land Use Element

The Project is not inconsistent with the Land Use Element. The Land Use Element is the cornerstone of the Comprehensive Plan. It establishes the basic policies guiding the physical form of the city, and provides direction on a range of development, conservation, and land use compatibility issues. The Element describes the balancing of priorities that must take place in order to accommodate a multiplicity of land uses within the boundaries of the District of Columbia. *See* 10-A DCMR § 300.1. The overarching land use goal of the District to is ensure the efficient use of land resources to meet long-term neighborhood, citywide, and regional needs; to help foster other District goals; to protect the health, safety, and welfare of District residents, institutions, and businesses; to sustain, restore, or improve the character and stability of neighborhoods in all parts of the city; and to effectively balance the competing demands for land

to support the many activities that take place within District boundaries. *See* 10-A DCMR § 302.1.

The Project will substantially advance the above stated goal by redeveloping the underutilized Property into a new mixed-use project containing market-rate ground floor commercial use and affordable housing for low and very low income households, including families, in a rapidly revitalizing area of the District that is close to Metrorail. Currently, the existing improvements on the Property do not take advantage of the potential for the site, and are not compatible with the future vision for the neighborhood put forth by the District in the Buzzard Point Plan. Despite budget constraints due to the deep level of affordability of the proposed housing, the proposed design will blend with the designs of other market-rate projects that are underway or planned for the surrounding neighborhood. The Project is consistent with the CG-4 zoning of the Property, and the Medium Density Residential land use designation of the Comprehensive Plan (Policy LU-2.1.1: Multi-Family Neighborhoods). The height and massing of the Project will complement and be compatible with new development that is contemplated to the south of the Property near the new Audi Field (Policy LU-1.4.1: Infill Development). In addition, as addressed earlier, the adjacent lot to the north is zoned RF-1 and improved with an existing apartment building set back from the Property's northern lot line by 29 feet. The Applicant has taken steps to reduce the massing of the proposed building through projections, bays, recesses, and material changes to help soften the juxtaposition between the proposed building, the existing immediate context, and the adjacent property to the north.

Transportation Element

The Project is not inconsistent with the policies contained within the Transportation Element of the Comprehensive Plan. The overarching goal for transportation in the District is to create a safe, sustainable, efficient multi-modal transportation system that meets the access and mobility needs of District residents, the regional workforce, and visitors; supports local and regional economic prosperity; and enhances the quality of life for District residents. *See* 10-A DCMR § 40 1.1. The Project will help achieve this goal due to its close proximity to Metrorail and several Metrobus routes, and through the substantial pedestrian improvements that will be made to the public realm adjacent to the Property (Policy T-1.1.4: Transit-Oriented Development, Policy T-2.4.1: Pedestrian Network, and Policy T-2.4.2: Pedestrian Safety). The Project will also provide secure bicycle parking as required under the Zoning Regulations (Action T-2.3.A: Bicycle Facilities). Finally, the Project will encourage the expansion of car-sharing by devoting two parking spaces within the below-grade garage of the building to car share spaces (Policy T-3.1.3: Car-Sharing).

Housing Element

The Project is not only “not inconsistent” with the policies of the Housing Element, but it will directly and substantially advance several policies that are aimed at addressing the District's affordable housing crisis. The overarching goal of the Housing Element is to “[d]evelop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia.” *See* 10 DCMR § 501.1. The Applicant will help the District achieve this goal by providing a mixed-use development that includes ground floor commercial use and 102 units of low and very low income affordable housing, including larger family-sized 3- and 4-

bedroom units, in a rapidly revitalizing area of the District that is close to public transportation (Policy H-1.1.1: Private Sector Support, Policy H-1.1.3: Balanced Growth, Policy H-1.1.4: Mixed Use Development, Policy H-1.1.7: New Neighborhoods, Policy H-1.2.3: Mixed Income Housing, and Policy 1.3.1: Housing for Families).

Environmental Protection Element

The Project is not inconsistent with the policies of the Environmental Protection Element. As stated in the Comprehensive Plan, the overarching goal for environmental protection in the District is to protect, restore, and enhance the natural and man-made environment, taking steps to improve environmental quality, prevent and reduce pollution, and conserve the values and functions of the District's natural resources and ecosystems. *See* 10-A DCMR § 601.1. The Project will help achieve this goal, in part, through the improvements that will be made to the public space surrounding the Property including adding several new street trees and planters (Policy E-1.1.1: Street Tree Planting and Maintenance). The Applicant will also improve environmental sustainability and storm water management on the Property through the use LEED-Silver v.4 to design the building, and the use of a large green roof system on the building's roof (Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff and Policy E-3.2.1: Support for Green Building).

Economic Development Element

The Project is not inconsistent with the policies of the Economic Development Element. The Project will provide positive economic benefit both through the ground floor commercial use that is proposed, and the onsite financial education services that will be provided to the residents of the building. Specifically, the on-site services provided by UPO will include monthly financial education classes. In addition, UPO will provide access to offsite services including various construction, culinary arts, hospitality, and emergency medical technician training classes at UPO facilities within the District. (Policy ED-4.1.4: Adult Education, Policy ED-4.2.3: Focus on Economically Disadvantaged Populations, Policy ED-4.2.4: Neighborhood-Level Service Delivery). These services will strengthen the District workforce and help increase the income of building residents.

Parks, Recreation, and Open Space Element

This Element addresses the future of parks, recreation, and open space in the District of Columbia. It recognizes the important role parks play in recreation, aesthetics, neighborhood character, and environmental quality. It includes policies on related topics such as recreational facility development, the use of private open space, and the creation of trails to better connect the city's open spaces and neighborhoods. *See* 10-A DCMR § 800.1. The overarching goal for parks, recreation and open space is to preserve and enhance parks and open spaces within the District of Columbia to meet active and passive recreational needs, improve environmental quality, enhance the identity and character of District neighborhoods, and provide visual beauty in all parts of the national capital. *See* 10-A DCMR § 801.1. Upon review, the Project is not inconsistent with this stated goal, nor with the policies contained within the Parks, Recreation, and Open Space Element.

Urban Design Element

The Urban Design Element addresses the District's physical design and visual qualities, and the goal of its various policies is to enhance the beauty and livability of the city by protecting its historic design legacy, reinforcing the identity of its neighborhoods, harmoniously integrating new construction with existing buildings and the natural environment, and improving the vitality, appearance, and security of streets and public spaces. *See* 10-A DCMR § 901.1. The Project will improve the urban design quality of First Street SW, a historic L'Enfant Plan street, by strengthening the street wall and respecting the historic right-of-way (UD-1.1 Protecting the Integrity of Washington's Historic Plans and Policy UD-1.1.2: Reinforcing the L'Enfant and McMillan Plans).

The Project will also improve the sense of identity for the Buzzard Point neighborhood which, as stated in the Buzzard Point Plan, is envisioned as an environmentally sustainable, vibrant, mixed-use neighborhood with improved pedestrian circulation, continuous access to the water, and new development opportunities that could increase the inventory of mixed-use development and affordable housing. *Id.* Buzzard Point Plan, pgs. 6-7. The Project will advance this vision through the ground floor retail and substantial affordable housing that is proposed, as well as its attractive façade design and significant improvements to adjacent public space (Policy UD- 2.2.5: Creating Attractive Facades, Policy UD-3 .1.1: Improving Streetscape Design, Policy UD-3.1.7: Improving the Street Environment). In addition, as addressed above, because the lot to the north is zoned RF-1 and improved with an existing apartment building set back from the Property's northern lot line by 29 feet, the Applicant has taken steps to design and articulate the building in a way that orients the tallest part of the Project to the south, thereby reducing the overall scale and will providing visual interest to surrounding properties (Policy UD-2.2.4: Transitions in Building Intensity).

Historic Preservation Element

According to the Comprehensive Plan, the overarching goal for historic preservation is to preserve and enhance the unique cultural heritage, beauty, and identity of the District of Columbia by respecting the historic physical form of the city and the enduring value of its historic structures and places, recognizing their importance to the citizens of the District and the nation, and sharing mutual responsibilities for their protection and stewardship. *See* 10-A DCMR § 1001.1. Upon review, the Project is not inconsistent with this stated goal, nor with the policies contained within the Historic Preservation Element. The site of the Project is not a historic landmark, nor is it located within the boundaries of a historic district. Nonetheless, the Project will improve the spatial character and urban design quality of First Street SW, a historic L'Enfant Plan street, by strengthening the street wall, and respecting the historic right-of-way (Policy HP-2.3.1: The Plan of the City of Washington, Policy HP-2.3.3: Spatial Character of L'Enfant Plan Streets, and Policy HP-2.3.4: Public Space Design in the L'Enfant Plan).

Community Services and Facilities Element

The Community Services and Facilities Element provides policies and actions on health care facilities, child care and senior care facilities, libraries, police stations, fire stations, and other municipal facilities such as maintenance yards. A well-balanced and adequate public

facility system is a key part of the city's drive to sustain and enhance the quality of life for its residents. *See* 10-A DCMR § 1100.1. The Comprehensive Plan goal for community services and facilities is to provide high-quality, accessible, efficiently managed, and properly funded community facilities to support the efficient delivery of municipal services, protect public health and safety, and enhance the well-being of current and future District residents. *See* 10-A DCMR § 1101.1. Upon review, the Project is not inconsistent with this stated goal, nor with the policies contained within the Community Services and Facilities Element.

Educational Facilities Element

The Educational Facilities Element addresses the location, planning, use and design of the District's educational facilities and campuses. It includes policies and actions related to primary, secondary, and higher educational facilities. The Element focuses on the efficient use of school property, and the relationship between schools and the communities that surround them. For District public schools, it focuses on school modernization and the right-sizing of school facilities to meet existing and long-term educational needs. *See* 10-A DCMR § 1200.1. The overarching goal for educational facilities in the District is to transform the educational environment in the District of Columbia, providing facilities that inspire excellence in learning, create a safe and healthy environment for students, and help each individual achieve his or her fullest potential. *See* 10-A DCMR § 1201.1. Upon review, the Project is not inconsistent with this stated goal, nor with the policies contained within the Educational Facilities Element.

Infrastructure Element

The Infrastructure Element provides policies and actions on the District's water, sanitary sewer, storm water, solid waste management, energy, and telecommunication systems. Investments in these systems are essential to our city's future, both to meet the demands of existing users and to accommodate future change and development. *See* 10-A DCMR § 1300.1. The overarching goal for infrastructure is to provide high-quality, efficiently managed and maintained, and properly funded infrastructure to serve existing development, as well as future change and growth. *See* 11-A DCMR § 1301.1. Upon review, the Project is not inconsistent with this stated goal, nor with the policies contained within the Infrastructure Element.

Arts and Culture Element

The Arts and Culture Element provides policies and actions dedicated to the preservation and promotion of the arts in the District of Columbia. Its focus is on strengthening the role of the arts in shaping the physical form of our city. *See* 10-A DCMR § 1400.1. The overarching goal for arts and culture is to support and encourage arts and cultural venues, programs and learning experiences in the District of Columbia that inspire a vibrant cultural life for all segments of the population, and enhance the city's diverse artistic and cultural traditions through decisions affecting the physical environment. *See* 10-A DCMR § 1401.1. Upon review, the Project is not inconsistent with this stated goal, nor with the policies contained within the Arts and Culture Element.

Lower Anacostia Waterfront / Near Southwest Area Element

The Lower Anacostia Waterfront / Near Southwest Planning Area encompasses approximately three square miles of land along both sides of the Anacostia River in the southwest and southeast quadrants of the District, and includes parts of Wards 6, 7, and 8. See 10-A DCMR 1900.1. According to the Comprehensive Plan, the key planning and development priorities within this area include revitalizing and increasing access to the waterfront; improving economic opportunities for the neighborhoods within the area; protecting existing neighborhoods while expanding housing, including affordable housing; and the protection of natural resources along the Anacostia and Potomac Rivers.

The Project is not inconsistent with the policies of the Lower Anacostia Waterfront / Near Southwest Area Element. Specifically, the Project will support the revitalization of the Buzzard point neighborhood into a new mixed-use neighborhood by adding new commercial use and a substantial amount of affordable housing (Policy AW-1.1.2: New Waterfront Neighborhoods, Policy AW-1.1.3: Waterfront Area Commercial Development, and Policy AW-2.2.7: Buzzard Point).

604.6 The Zoning Commission shall find that the proposed design review development will not tend to affect adversely the use of neighboring property and meets the general special exception criteria of Subtitle X, Chapter 9.

The Project has been carefully designed to fit into its context from a design and use perspective and will not tend to adversely affect the use of any neighboring property. The Project's height, massing, and orientation are appropriate given the correspondingly-similar elements of the abutting Phase I building. As noted, though the adjacent lot to the north is zoned RF-1 and improved with an existing apartment building set back from the Property's northern lot line by 29 feet, the Applicant has oriented the massing of the proposed Project in such a way that the scale and bulk of the building is broken up by projections, bays, recesses, and material changes. This configuration of elements ensures the proposed Project respects existing neighboring properties while delivering a compelling and dynamic appearance.

The Project is harmonious with the general purpose and intent of the Zoning Regulations and Zoning Maps for the CG-4 zone. The CG-4 Zone District "is intended to permit medium- to high-density mixed-use development with a balance of uses conducive to a higher quality of life and environment for residents, businesses, employees, and institutions..." See Subtitle K § 504.1. The Project helps achieves the certain goals and objectives applicable in the Capitol Gateway zones generally and in the CG-4 zone specifically. The Project requires only minor dimensional relief from two elements of the Zoning Regulations applicable to the Property, which is minimal in light of the substantial ways the Project advances the goals and objectives of the Capitol Gateway zones. Accordingly, the Project satisfies the general special exception criteria of Subtitle X, Chapter 9.

604.7 The Zoning Commission shall review the urban design of the site and the building for the following criteria:

- (a) *Street frontages are designed to be safe, comfortable, and encourage pedestrian*

activity, including:

- (1) Multiple pedestrian entrances for large developments;*
- (2) Direct driveway or garage access to the street is discouraged;*
- (3) Commercial ground floors contain active uses with clear, inviting windows;*
- (4) Blank facades are prevented or minimized; and*
- (5) Wide sidewalks are provided;*

The street frontage along First Street SW has been designed to be safe, comfortable, and encourage pedestrian activity. The Project includes ground floor commercial use with a distinct entryway along First Street SW and a separate entrance for the residential use along First Street SW as well. In addition, outdoor seating is provided in public space along First Street SW in front of the building. The Project also includes streetscape improvements including new sidewalk paving and landscaping adjacent to the Property. All public space improvements, including the width of the sidewalks, will comply with District Department of Transportation requirements. As stated above, blank facades have been minimized.

- (b) Public gathering spaces and open spaces are encouraged, especially in the following situations:*
- (1) Where neighborhood open space is lacking;*
 - (2) Near transit stations or hubs; and*
 - (3) When they can enhance existing parks and the waterfront;*

The Property is not located near a transit station or hub, nor is it located near an existing park or waterfront. While public gathering spaces and open spaces are encouraged, due to the relatively small size of the Property compared to the proposed development program, the Applicant is unable to provide public gathering spaces and open spaces on the Property. The Applicant is providing outdoor seating for the proposed ground floor commercial use.

- (c) New development respects the historic character of Washington's neighborhoods, including:*
- (1) Developments near the District's major boulevards and public spaces should reinforce the existing urban form;*
 - (2) Infill development should respect, though need not imitate, the continuity of neighborhood architectural character; and*
 - (3) Development should respect and protect key landscape vistas and axial views of landmarks and important places;*

The Property is not located along the District's major boulevards and the proposed public space improvements respect the existing urban form. The Project does not infringe on any key landscape vistas or axial views of landmarks and important places. As previously stated, the building's materials include red and ironspot brick, fiber cement, wood, and metal paneling, which are compatible with the neighborhood architecture in the surrounding Capitol Gateway Zone Districts, without imitating the architecture.

- (d) Buildings strive for attractive and inspired façade design, including:*
- (1) Reinforce the pedestrian realm with elevated detailing and design of first*

- (1st) and second (2nd) stories; and*
(2) *Incorporate contextual and quality building materials and fenestration;*

As shown on the architectural drawings, the ground floor includes active uses with clear inviting windows and blank facades have been minimized. In addition, the pedestrian realm along First Street SW has been reinforced through the provision of outdoor seating. Moreover, the building's materials include red and ironspot brick, fiber cement, wood, and metal paneling, and projections are included to enhance the building's design.

- (e) *Sites are designed with sustainable landscaping;*

The Project includes a green roof and a courtyard for the building's residents, both of which are designed with sustainable landscaping. In addition, the proposed streetscape improvements along First Street SW also are designed with sustainable landscaping.

- (f) *Sites are developed to promote connectivity both internally and with surrounding neighborhoods, including:*
- (1) *Pedestrian pathways through developments increase mobility and link neighborhoods to transit;*
 - (2) *The development incorporates transit and bicycle facilities and amenities;*
 - (3) *Streets, easements, and open spaces are designed to be safe and pedestrian friendly;*
 - (4) *Large sites are integrated into the surrounding community through street and pedestrian connections; and*
 - (5) *Waterfront development contains high quality trail and shoreline design as well as ensuring access and view corridors to the waterfront.*

The Project includes access to the below-grade parking garage via a 16-foot wide public alley located to the rear of the Property, and so pedestrian movements across the frontage of the Property will be safe and enjoyable. In addition, 45 long-term bicycle parking spaces will be located in the below-grade parking garage, and a compliant number of short-term bicycle parking spaces will be provided along the front of the Project. Also, a new Capital Bikeshare station will be constructed near the corner of First Street SW and Q Street SW (as part of the zoning approval of Phase I), offering convenient access for residents and patrons of the Project who wish to bike to and from the Property. The Project is not a waterfront development.

As noted, the Applicant is requesting flexibility from the Zoning Commission for the development standards pertaining to lot occupancy for residential use and courts, and variance relief for the loading requirements, as discussed below. Subtitle K § 512.7 of the Zoning Regulations provides that the Zoning Commission may hear and decide any additional requests for special exception or variance relief needed for the Property together with the application for design review approval.

III. VARIANCE RELIEF

In accordance with Subtitle K § 512.7, the Applicant requests an area variance from the loading requirements of Subtitle C § 901.1. The Applicant is required to provide one 30-foot

loading berth, one 100 square foot loading platform, and one 20-foot service/delivery space for the Project. The Applicant is providing one 30-foot loading berth as required. However, due to site constraints, the Applicant seeks relief from the loading platform requirement and the service/delivery space requirements. The Zoning Commission is authorized to grant an area variance where it finds that three conditions exist:

Under D.C. Code § 6-641.07(g)(3) and Subtitle X § 1000.1, the Board (and by extension, the Zoning Commission) is authorized to grant an area variance where it finds that:

- (1) The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) The owner would encounter practical difficulties if the Zoning Regulations were strictly applied; and
- (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also*, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). Applicants for an area variance must demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972) (noting, “area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). As discussed below, and as will be further explained in the Applicant’s prehearing statement and at the public hearing, all three prongs of the area variance test are met in this application.

A. Exceptional Condition or Situation

The phrase “exceptional situation or condition” in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin*, 579 A.2d at 1168. The Property is characterized by an exceptional situation and condition arising from a confluence of the following factors: the location of the rear public alley on a relatively narrow lot; the minimal amount of street frontage; and from the specific design review criteria.³

³ The Zoning Commission found this same circumstances to be an exceptional condition or situation for Phase I, as stated in ZC Order 17-13, pg. 18: “The Commission finds that the exceptional condition arises from... the specific design review criteria for the Property that discourages access to parking and loading facilities directly from the street. The design review requirements of Subtitles K and X: (i) encourage development of the Property with a mixture of residential and commercial uses; (ii) encourage minimizing conflicts between vehicles and pedestrians; (iii) encourage pedestrian activity along the adjacent street frontages; (iv) and discourage direct driveway or garage access to the street.”

The unique condition of the public alley the alley is that it does not run along the entire rear of the Property, but only for a length of 19 feet, 3 inches, or only approximately 25% of the rear property line. This condition does not occur anywhere else on the Square.

The DDOT design and engineering manual provides guidance that the minimum acceptable distance between the edge line of a driveway and the edge line of an adjacent driveway is 24 feet, as measured along the roadway curb between the near edge lines of the driveway. Additional distances must be provided for circumstances when trees are located between the driveways, as would be the case in this instance.⁴ The Applicant's lot is relatively narrow and provides limited street frontage along First Street SW at 75.06 feet. In comparison, the adjacent property to the north contains an approximately 18-foot wide curb cut along the property line. Given these facts, the Applicant's lot is uniquely constrained for curb cut access. The Applicant is proposing to provide ground floor commercial use, as described above, in addition to a residential lobby. As a result, there is no additional room on the ground floor of the building to accommodate a 30-foot loading berth, a 100 square foot platform, and a 20-foot service/delivery space. The design review requirements of Subtitles K and X: (i) encourage developments of the Property with a mixture of residential and commercial uses; (ii) encourage minimizing conflicts between vehicles and pedestrians; (iii) encourage pedestrian activity along the adjacent street frontages; and (iv) discourage direct driveway or garage access to the street.

B. Resulting Practical Difficulty

The strict application of the Zoning Regulations would result in a practical difficulty to the Applicant in providing a compliant loading platform and 20-foot service/delivery space. The short dimension of alley access to the rear and relatively narrow lot width requires that the building be designed in such a way that the garage entry and associated loading access be exclusively confined to the southeast portion of the Property. Consequently, the 30-foot loading berth at the rear of the Project is oriented north-south to accommodate truck movements that would result in front-in and front-out access, as per DDOT best practices.⁵ The need to provide a drive aisle of compliant width, coupled with the need to provide a north-south oriented loading berth does not leave sufficient space to locate a loading platform or a 20-foot service/delivery space on the ground floor level. For similar reasons, the short dimension of alley access along the rear drives the design of internal circulation and compresses the dimensions for car movements both to and within the below-grade garage. Consequently, the 20-foot service/delivery space in the below-grade garage cannot be provided.

To satisfy all the loading requirements, the Applicant would need to provide access for delivery vehicles along First Street SW by reconfiguring the building design to accommodate adequate space for the internal truck turns associated with a 30-foot wide berth and loading platform. However, such a design would significantly constrain the Applicant's ability to provide ground floor commercial use and minimize conflicts between vehicles and pedestrians as specified in Subtitle K § 512.3. In addition, if the Applicant provided the requisite loading, a curb cut along First Street SW would be necessary, which is specifically discouraged by Subtitle X § 604.7(a)(2) and DDOT best practices. Further, the location of any proposed curb cut on the

⁴ DDOT Design and Engineering Manual, 2017, pgs. 31-12 and 31-13.

⁵ DDOT Design and Engineering Manual, 2017, pg. 31-8.

Property would be severely limited by the 24-foot minimum distance that must be maintained between curb cuts on adjacent properties, as per DDOT guidelines. The Applicant notes that such a curb cut would likely not be supported by DDOT in any event, due to the fact that alley access exists. Regardless, if the Applicant provided the required loading the Project would not meet the specific design review requirements specified in Subtitles K and X of the Zoning Regulations, since the loading facilities would require an additional 22-24 feet of street frontage devoted to a loading entryway and additional interior space devoted to loading.

C. No Harm to Public Good or Zone Plan

Granting the relief for loading will not cause a substantial detriment to the public good, or substantially impair the intent, purpose or integrity of the zone plan. The Applicant anticipates that the proposed 30-foot loading berth to the rear of the Project will adequately serve the loading needs of the proposed residential and commercial uses. The two uses will share the loading facilities with no detriment to the public good or zone plan since no loading is required for the ground floor commercial use and the loading provided is adequate to serve the residential use. The intent of the loading regulations is to provide adequate facilities for certain uses, and the Applicant will work with DDOT as required to ensure that the loading needs of the Project are satisfied despite the challenges associated with the narrow lot dimensions and resulting constrained alley access. In doing so, the Applicant demonstrates that the zone plan will not be substantially impaired by the granting of the requested relief.

IV. SPECIAL EXCEPTION RELIEF

Pursuant to Subtitle X § 603, Design Review Flexibility, the Zoning Commission may, as part of the design review process, “grant relief from the development standards for height, setbacks, **lot occupancy**, **courts**, and building transitions; as well as any specific design standards of a specific zone.” *See* Subtitle X § 603.1 (emphasis added). Further, as noted, Subtitle K § 512.7 provides that the Zoning Commission may hear and decide any additional requests for special exception or variance relief needed for the Property together with the application for design review approval. Pursuant to these provisions, the Applicant requests special exception flexibility from the Zoning Commission for the development standards pertaining to lot occupancy for residential use (Subtitle K § 504.6) and courts (Subtitle K § 504.10).

Lot occupancy: The maximum lot occupancy for residential use permitted in the CG-4 zone is 80% for Projects that participate in the Inclusionary Zoning program, as is the case here. *See* Subtitle K § 504.6. The Applicant proposes a lot occupancy of 80.7% for the third floor. All other floors with residential use in the Project meet the requirement.

Courts: The minimum width of a closed court for residential use is 4 inches per foot of height of court, but not less than 15 feet. Further, the minimum area of a closed court for residential use is twice the square of the required width of court dimension, but not less than 350 square feet. *See* Subtitle K § 504.10.

The Project includes two areas that contain courts. One non-conforming closed court is located along the northern lot line (“North Court”). Two other non-conforming closed courts are located along the southern lot line abutting the Phase I building (“South Court”).

The North Court is 99.58 feet in height, measures approximately 89 feet in width, and contains 534 square feet in area. *See* architectural drawings at **Exhibit D**, sheet A-39. Based on the height of the court, the minimum width required is 33.2 feet, and the requirement is satisfied. However, the area of the closed court is less than twice the square of the required width of court dimension⁶, and so special exception flexibility for the court area requirement is requested for the North Court.

The South Court is a stacked court with a courtyard on the second floor of the Project. *See* architectural drawings at **Exhibit D**, sheet A-38. The South Court's courtyard is 99.58 feet in height, measures 27.66 feet in width and contains approximately 226 square feet of area. Based on the height of the court, the required width is 33.2 feet and so special exception flexibility amounting to 5.53 feet of court width is requested. Further, the South Court's area is less than twice the square of the required width of court dimension⁶, and so special exception flexibility is requested.

Starting on the third floor, the South Court has a height of 89.58 feet, width of 37.66 feet, and area of 369 square feet. Based on the height of the South Court at the third floor, the required width is 29.9 feet and the requirement is satisfied. However, the area is less than twice the square of the required width of court dimension⁷, and so special exception flexibility for South Court area requirement is requested.

Under D.C. Code § 6-641.07(g)(2) and 11 DCMR X § 901.2, the Board (and by extension, the Zoning Commission) is authorized to grant a special exception where it finds the special exception:

- (1) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (2) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (3) Will meet such special conditions as may be specified in [the Zoning Regulations]. 11 DCMR Subtitle X § 901.2.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the application must ordinarily be granted. *Id.*

The Project is consistent with the purpose and intent of the Zoning Regulations and related maps. The purpose of the Capitol Gateway zones are to assure development of the area with a

⁶ $33.2^2 \times 2 = 2,204.5$ square feet

⁷ $29.9^2 \times 2 = 1,788$ square feet

mixture of residential and commercial uses. *See* Subtitle K § 500.1. The CG-4 zone specifically is intended to “permit medium- to high-density mixed use development with a balance of uses conducive to a higher quality of life and environment for residents, businesses, employees, and institutions; encourage provision of active pedestrian-oriented streets with active ground floor uses, particularly along specified primary streets; and promote pedestrian safety by separating pedestrian and vehicular circulation patterns.” *See* Subtitle K § 504.1.

The Project proposes an aesthetically-pleasing, mixed-use building with ground floor commercial space, as intended in the Zoning Regulations, and well as recommended by the Comprehensive Plan Citywide and Area Elements, as described earlier. This use of the Property will enliven the streetscape, resulting in a higher quality of life of District residents and visitors. Pedestrian enjoyment along First Street SW will be provided through proposed improvements to the public space, and pedestrian safety is preserved, as no curb cuts are proposed.

The minimal additional building bulk associated with the flexibility will present no negative impacts to neighboring property, as the Applicant has worked to stagger the building façades through projections, bays, and recesses to vary and reduce the interplay between the Project and adjacent properties. The effect is further complemented by an elegant blend of building materials.

Though the closed courts do not satisfy the minimum requirements, the flexibility associated with this request will not unduly affect the light and air available to residents of the Project, and will not impact the privacy or unduly increase the level of noise emanating from the Property.

C. Additional Flexibility

The Applicant has made every effort to provide a level of detail that conveys the architectural significance of the Project. Nonetheless, some additional flexibility is necessary to address potential issues that arise during construction and other issues that cannot be anticipated at this time. Thus, the Applicant requests flexibility in the additional following areas:

1. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
2. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction;
3. To increase the final number of residential units by no more than 10% above the total number approved to respond to program demand, or to decrease the final number of residential units within the approved gross floor area in order to accommodate demand for larger units;
4. To vary the location, attributes and general design of the streetscape elements incorporated in the project to comply with the requirements of and the approval by the DDOT Public Space Division;

5. To make refinements to the garage configuration, including layout, parking spaces and other elements, so long as the number of parking spaces provided is at least the minimum number of spaces required by the Zoning Regulations;
6. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, venting, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other applicable approvals;
7. To locate retail entrances in accordance with the needs of the retail tenants; and to vary the facades as necessary within the general design parameters proposed for the project; and to vary the types of uses designated as “retail” use on the Plans to include the following use categories: office, retail, services, general, services financial, and eating and drinking establishments; and
8. To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials no not change from those shown on the approved Plans.

IV. AGENCY / COMMUNITY COORDINATION

The Applicant intends to conduct extensive and transparent outreach with OP, DDOT, the affected ANC, stakeholder organizations, and members of the surrounding community. In so doing, the design of the Project will satisfy the design review criteria for the Capitol Gateway, and several planning goals, particularly those relating to the provision of affordable housing. As required under Subtitle Z § 301.10(e), attached at **Exhibit E** is a statement certifying the service of the notification of intent to file.

V. TRANSPORTATION STUDY

The Applicant and its traffic consultant, Erwin Andres of Gorove/Slade, in consultation with DDOT, are currently in the process of developing the scope of the comprehensive transportation impact analysis that will be prepared for the Project. Upon finalizing the scope of the analysis with DDOT, the Applicant will proceed with completing a full analysis of the potential impacts of the Project on the surrounding transportation network, and preparing a vigorous Transportation Demand Management Plan (“TDM”). The transportation analysis will also be submitted to the affected ANC, OP, and DDOT either at the same time, or prior to, submission to the Commission.

VI. CONCLUSION

For the reasons stated above, the Project meets the applicable standards for design review, including flexibility from the courts and lot occupancy for residential use and the variance relief for loading under the Regulations. Accordingly, the Applicant respectfully requests that the Zoning Commission grant the application.