

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 18-13
Z.C. Case No. 18-13
TM Jacob, LLC
(CG Zone Design Review @ Square 656, Lot 53 [1530 First Street, S.W.]
March 11, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on November 15, 2018, to consider the application (the "Application") of TM Jacob, LLC (the "Applicant") for design review approval of a new 100% affordable residential building in Lot 53 in Square 656 (the "Property") in the CG-4 zone. The Applicant requested design review with variance and special exception relief pursuant to Subtitle K §§ 512.1, 512.2, and 512.7 and Subtitle X § 604 of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the "Zoning Regulations," to which all references are made unless otherwise specified) The public hearing was conducted in accordance with the provisions of Subtitles X and Y. For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

Notice

1. On June 19, 2018, the Applicant filed a notice of intent to file a design review application pursuant to Subtitle Z § 301.6. (Exhibit ["Ex."] 2E)
2. On August 10, 2018, the Applicant filed the Application. (Ex. 1-5.)
3. OZ referred the application to the National Capital Planning Commission ("NCPC"), and gave notice of the November 15, 2018 public hearing (the "Hearing") by mail to:
 - Advisory Neighborhood Commission ("ANC") 6D, the "affected ANC" per Subtitle Z § 101.8;
 - The Office of Planning ("OP");
 - The District Department of Transportation ("DDOT");
 - The D.C. Council;
 - The Department of Consumer and Regulatory Affairs ("DCRA");
 - The Office of the Attorney General;
 - The Department of Energy and Environment ("DOEE");
 - The District of Columbia Housing Authority; and
 - The owners of property within 200 feet of the Property and in the *D.C. Register*.

4. The Applicant provided evidence that notice of the Hearing was posted on the Property on October 5, 2018. (Ex. 7, 12, 17.)

Parties

5. The Applicant and the ANC were automatically parties pursuant to Subtitle Z §§ 101.8, 403.5, and 404.1.
6. On September 6, 2018, Hosea McClain, *et al.* (“McClain”) submitted an application for party status in opposition with a request for advanced consideration (“Original Party Status Request”). (Ex. 9.)
7. On October 19, 2018, McClain withdrew the Original Party Status Request, prior to Commission consideration of the request. (Ex. 9A.)
8. On November 1, 2018, McClain submitted a revised application for party status in opposition (“Revised Party Status Request”). (Ex. 23.)
9. On November 4, 2018, McClain withdrew the Revised Party Status Request, prior to the Commission’s consideration of the request. (Ex. 32.)
10. No other party status requests were filed; the only parties to the case were the Applicant and the ANC. (Ex. 32, 37.)

The Property

11. The Property is located at 1530 First Street, S.W. (Square 656, Lot 53), approximately mid-block on the east side of First Street, S.W. between P Street, S.W. to the north, and Q Street S.W. to the south. (Ex. 2, 2B.)
12. The Property has a land area of approximately 13,265.53 square feet. (Ex. 38.)
13. The Property is presently improved with a former private school building, which is currently vacant. (Ex. 2, 29.)
14. The Property is located two blocks west of South Capitol Street. To the north is a series of three-story apartment buildings. 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. (Ex. 2, 29.)
15. To the south is 1542-1550 First Street, S.W., which was approved in 2017 under ZC Case No. 17-13 for construction of a mixed-use building of 100 feet in height (“Phase I Building”). The Phase I Building shares a lot line with the Property. The Application is a companion project to the Phase I Building. (Ex. 2.)

16. The Property is located within 0.5 miles of the Waterfront-SEU Metrorail Station, serviced by the green line, Metrobus service stops in close proximity, and two Capitol Bikeshare stations within 0.2 miles. (Ex. 18.)
17. The Property is located in the Capitol Gateway, CG-4 zone. (Ex. 2B, 29.)
18. The CG-4 zone “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.” (Subtitle K § 504.1; Ex. 2, 29.)

Application - Initial Submission

19. The Application proposed to construct a mixed-use building (the “Building”) that includes approximately 96,968 square feet of residential uses, approximately 7,698 square feet of ground-floor commercial uses, and the remainder as building service areas (the “Project”). (Ex. 2D2.)
20. The ground-floor will contain neighborhood-serving commercial uses from one or more of the following commercial use groups:
 - (a) Office (Subtitle B § 200.2(x));
 - (b) Retail (Subtitle B § 200.2(cc));
 - (c) Services, General (Subtitle B § 200.2(dd));
 - (d) Services, Financial (Subtitle B § 200.2(ee)); and
 - (e) Eating and Drinking Establishments (Subtitle B § 200.2(j)).(Ex. 21, 29, 38C1-C2.)
21. The Building would include approximately 101 residential units, comprised of 46 one-bedroom units, 37 two-bedroom units, 10 three-bedroom units, and 8 four-bedroom units. (Ex. 2, 38C.)
22. Eighty of the units will be reserved for households with incomes not exceeding 50% of median family income (“MFI”) and 21 of the units will be reserved for households with incomes not exceeding 30% MFI. (Ex. 2, 21, 26, 29.)
23. The residents of the 21 units reserved for households with incomes not exceeding 30% MFI will be referred through the District’s Coordinated Entry System. These residents will be provided with Permanent Supportive Housing (“PSH”) services and will receive on-site case management services designed to help them attain self-sufficiency. Case management

will be provided according to the Department of Human Services (“DHS”) PSH standards. United Planning Organization’s Community Development Corporation (“UPO CDC”) will conduct monthly home visits to ensure residents are following their specified plan and are living in a safe environment. (Ex. 21, 26, 29.)

24. The Project is proposed to be exempt from the Inclusionary Zoning (“IZ”) requirements based on anticipated Housing Production Trust Fund (“HPTF”) funding and would be exempt for the 40-year HPTF affordability period. (Ex. 21, 26, 29.) The Project would be required to remain IZ-compliant after the 40-year HPTF affordability period expires, as the Applicant is taking advantage of bonus density available to IZ projects in the CG-4 zone (Subtitle K § 504.3). The exemptions will be determined at building permit issuance.
25. The Application is proposed to pursue LEED-Silver certification for the Building under LEED v4, consistent with the Green Building Act and the Department of Housing and Community Development’s funding requirements. The Building includes a green roof and potentially, solar panels on the Building’s roof. (Ex. 26, 29.)
26. The Building is proposed to have 18 below-grade parking spaces and one ADA-compliant van space, which will be accessible from an existing public alley to the rear of the Property. Two of the parking spaces will be reserved for car-sharing services, each of which may count as three required parking spaces, per Subtitle C § 708.2, resulting in a total of 23 parking spaces, including one ADA-compliant space. No curb cuts are proposed. (Ex. 18, 38C1-C2.)
27. The Project will have a maximum building height of 100 feet and an overall floor area ratio (“FAR”) of 7.77. (Ex. 38C1-C2.) The CG-4 zone permits a maximum height of 100 feet and 8.2 FAR with IZ on the Property. (Subtitle K §§ 504.4, 504.3.)
28. The Application is proposed to have a penthouse with the maximum height of 17 feet, as measured to the top of the mechanical screening. The penthouse will be set back at least 1:1 to the front (10’3”), rear (10’3”), and northern side (10’8”) of the Project. (Subtitle C § 1502.1.) No penthouse setback is required on the southern side of the Project. The proposed 3-foot, 6-inch railing along the front of the penthouse will be set back 4 feet, 8 inches from the front building wall of the roof on which it is located, in conformance with the front setback requirements. (Ex. 38C1-C2.)
29. The Application is proposed to have one 21-foot, 6-inch-service/delivery space and a 100-square-foot loading platform, accessed from the alley to the rear of the Property. This design allows vehicles to access the loading area without traversing the adjacent property at 1515 Half Street, S.W. (Ex. 38A1-A2, 38C1-C2.)
30. One 30-foot loading berth, one 100-square-foot loading platform, and one 20-foot service/delivery space are required for the residential portion of the Project. (Subtitle C § 901.1.)
31. The Application proposed no plaza for the Project due to site constraints. (Ex. 26.)

32. The Applicant is required to provide a plaza immediately adjacent to the main entrance to the Building, comprising eight percent of the lot area because the Property is more than 10,000 square feet. (Subtitle K § 504.13, Subtitle C § 1701.)
33. The Application is proposed to comply with the lot occupancy requirements of Subtitle K § 504.6 that limit lot occupancy to 80%, except for the third floor which has a lot occupancy of 80.67%. (Ex. 38C1-C2.)
34. The Project is proposed to include three closed courts:
 - (a) The North Court is 99.58 feet in height, measures approximately 89 feet in width, and contains 534 square feet in area. 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 dimension; (Ex. 2, 38C1-C2.)
 - (b) The lower court of the South Courts is 99.58 feet in height, 27.66 feet in width, and contains approximately 226 square feet of area; and (Ex. 2, 38C1-C2.)
 - (c) The upper court of the South Courts begins on the third floor, and has a height of 89.58 feet, a width of 37.66 feet, and an area of 369 square feet. While the upper court meets the required width, the area is less than twice the square of the required width of court dimension. (Ex. 2, 38C1-C2.)
35. The minimum width of a closed court for a residential use must equal 4 inches per foot of building height, but not less than 15 feet. The minimum area of a closed court for a residential use must equal twice the square of the required court width dimension, but not less than 350 square feet. (Subtitle K § 504.10.)
36. The Application provided a Comprehensive Transportation Review (“CTR”) dated September 27, 2018, prepared by Gorove/Slade Associates, Inc. which found that the Project and requested relief would not have a detrimental impact to the surrounding transportation network as long as the Project implemented the Transportation Demand Management Plan (“TDM”) and the Loading Demand Management Plan (“LDM”) detailed below: (Ex. 18.)¹
 - (a) Applicant’s TDM Plan:
 - The Applicant shall identify a TDM Leader (for planning, construction, and operations) at the building, who will act as a point of contact with DDOT/Zoning Enforcement and shall provide annual updates to residents, and

¹ The Applicant’s CTR noted that it was based on the Applicant’s adjusted LDM Plan and would be able to provide the required 20-foot service/delivery space and 100-square-foot loading platform instead of the previously proposed 30-foot loading space but would still require loading relief due to the inability to provide a separate 30-foot dedicated loading space. (Ex. 18.)

other interested individuals. The TDM Leader shall work with residents to distribute and market various transportation alternatives and options;

- The Applicant shall provide TDM materials to new residents in the Residential Welcome Package materials;
- The Applicant shall meet zoning requirements by providing approximately 45 long-term bicycle parking spaces in the building garage;
- Eight short-term bicycle parking spaces shall be provided along First Street, meeting zoning requirements;
- All parking on site shall be priced at market rates, at minimum, defined as the average cost for parking in a quarter-mile radius from the site;
- The Applicant shall unbundle the cost of residential parking from the cost of lease or purchase of each unit;
- The Applicant shall provide each unit's incoming residents with a \$100 SmarTrip Card. A proactive marketing strategy will be provided to ensure residents are aware of this benefit;
- The Applicant shall provide a bicycle repair station to be located in the secure long-term bicycle storage room;
- The Applicant shall provide an on-site business center to residents with access to copier, fax, and internet services; and
- The Applicant shall install a Transportation Information Center Display (electronic screen) within the residential lobbies containing information related to local transportation alternatives.

(b) Applicant's Loading Management Plan:

- A loading manager shall be designated by the building management. The manager shall coordinate with residents to schedule deliveries and will be on duty during delivery hours. The loading manager shall oversee both the rear loading area and any loading that would need to occur on First Street;
- Trucks utilizing the loading area shall be restricted to 23 feet in length. The few trucks longer than 23 feet shall be required to load curbside utilizing the metered spaces on First Street;
- Residents shall be required to schedule move-ins and move-outs with the loading manager through leasing regulations;
- The loading manager shall coordinate with trash pick-up to minimize the time trash trucks need to use the loading area. Trash services shall be serviced by a private company that utilizes trash trucks able to be accommodated in the loading area provided on site;
- All trucks accessing the property shall not idle and must follow all District guidelines for heavy vehicle operation including but not limited to the Air Quality Regulations (Chapter 9 § 900 of Title 20 of the District of Columbia Municipal Regulations), the recommendations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System; and
- The loading manager shall be responsible for disseminating DDOT's Freight Management and Commercial Vehicle Operations document to drivers as

needed to encourage compliance with District laws and DDOT's truck routes. The loading manager shall also post these documents in a prominent location.

Application - First Revision

37. On October 26, 2018, the Applicant submitted its 20-Day Supplemental Statement, including: (Ex. 21A1-21A2.)
- (a) Revised architectural drawings showing updated gross floor area calculations of approximately 96,942 square feet of gross floor area for residential use and 7,052 square feet of gross floor area for ground-floor commercial uses, and updated number of parking spaces provided to 23 spaces;
 - (b) Explanation of the revised loading variance relief noting that the Project would provide one 21-foot, 6-inch-service space and one 100-square-foot loading platform at the rear of the Building but would still require relief from the requirement to provide one 30-foot-loading berth; and
 - (c) An update on the Applicant's community outreach efforts.

Application - Second Revision

38. On November 2, 2018, the Applicant submitted a Supplemental Statement, including: (Ex. 26, 26A1-A2.)
- (a) Variance request from the plaza requirements; and
 - (b) Revised architectural drawings including:
 - IZ analysis sheet;
 - Clarifications of the north elevation showing 'at-risk' windows;
 - Zoning information sheet;
 - Building signage details;
 - Revisions and clarifications to the First Street, S.W. Streetscape Improvements; and
 - A LEED scorecard tabulation sheet for the proposed LEED-Silver certification.

Application - Third Revision

39. On December 3, 2018, as requested by OP and the Commission at the Hearing, the Applicant submitted a set of revised plans, which included a revised lot area calculation of 13,266 square feet. (Ex. 38, 38C1-38C2.) The revised plans also showed updated gross floor area calculations of approximately 96,927 square feet of gross floor area for residential use and 7,085 square feet for ground-floor commercial uses.

Zoning Relief Requested

40. The Applicant seeks variance and special exception relief pursuant to Subtitle K § 512.7 and Subtitle X §§ 902.1 and 1002.1 from the following sections:

Variance from Residential Loading Requirements (Subtitle C § 901.1)

41. The Application asserts that it meets the variance requirements for the loading relief because:
- (a) The Property is relatively narrow and provides limited street frontage on First Street. The Applicant has also indicated that DDOT would be unlikely to approve a curb cut on the front of the Property. In addition, the public alley at the rear of the property only extends along approximately 25% of the rear of the Building;
 - (b) Given the current configuration of the Property, the Applicant would be unable to provide the required rear loading access in a manner that would comply with DDOT standards. Providing access from the front of the property would necessitate the redesign of the Building and would limit the space available for commercial uses; and
 - (c) The proposed loading/service area will be sufficient to serve the needs of the residential use and notes that loading is not required for the proposed commercial uses. Further, the application asserts that the proposed design will minimize pedestrian-vehicular conflicts.

(Ex. 1, 2, 29.)

Variance from the Plaza Requirements (Subtitle K § 504.13)

42. The Application asserts that it meets the variance criteria for the plaza relief because: (Ex. 26, 29.)
- (a) The combination of the Property's narrow street frontage and the existing wide public space/sidewalk area – approximately 28 feet from the curb to the property line – would necessitate pulling the ground floor in an additional 14 feet from the property line in order to provide a plaza space comprising eight percent of the total lot area;
 - (b) Providing this plaza area would both restrict the Applicant's ability to provide successful commercial space on the ground floor and would also result in an excessively wide 42-foot open area in front of the Building which would result in a jagged and uninviting streetscape; and.
 - (c) The Building as currently designed does not impair the intent or purpose of the Zoning regulations and will provide a considerable amount of attractive and usable public space in front of the Building.

Special Exception from the Lot Occupancy Requirements (Subtitle K § 504.6)

43. The Application asserts that it meets the special exception requirements for the lot occupancy relief because: (Ex. 1, 2, 29.)

- (a) The Building is being constructed in accordance with the purpose and intent of the Capitol Gateway Zone, and the Citywide and Area elements of the Comprehensive Plan (“CP,” Title 10-A of the District of Columbia Municipal Regulations); and
- (b) The additional bulk will not result in any adverse impacts on the neighboring properties because the Building has staggered the façade through bays, projections, and recesses to incorporate the Building with the surrounding structures.

Special Exception from the Court Requirements (Subtitle K § 504.10)

44. The Applicant asserts that it meets the special exception requirements for the court requirement relief because: (Ex. 1, 2, 29.)

- (a) The Building is being constructed in accordance with the purpose and intent of the Capitol Gateway Zone, and the CP’s Citywide and Area elements; and
- (b) The non-compliant courts will not adversely impact the neighboring properties in terms of privacy, light, air, or noise.

45. The Application also seeks design flexibility from the Final Plans. (Ex. 2.)

Responses to the Application

OP Report

46. By report dated November 8, 2018 (the “OP Report”), OP recommended approval of the Application including the requested variance and special exception relief pending the Applicant’s provision of: (Ex. 29.)

- (a) Detailed building signage plan, including the residential lobby entrance and retail areas;
- (b) Revision of the First Street, S.W. streetscape improvements to conform to the Buzzard Point Streetscape Design Guidelines, including revisions to the sidewalk treatment and brick planters and seating in public space;
- (c) Examination of whether the green features of the building can be enhanced, including LEED-Gold and rooftop solar; and
- (d) A color and materials board.

DDOT Report

47. By report dated November 1, 2018 (the “DDOT Report”), DDOT stated that it has no objection to the Application including the requested zoning relief provided the Applicant implement the proposed TDM Plan and LDM Plan contained in the Applicant’s CTR, subject to proposed revisions by DDOT in its report. (Ex. 18, 22.)

48. DDOT’s proposed revisions included the installation of at least one electric vehicle charging station in the parking garage and the following regarding the Applicant’s proposed TDM plan:

- (a) Work with DDOT and goDCgo, DDOT's TDM program to implement TDM measures at the site;
 - (b) Share the full contact information of the TDM coordinator for the site with DDOT and goDCgo;
 - (c) Provide at least two shopping carts for residential use; and
 - (d) Offer residents either an annual carshare or Capital Bikeshare membership for a period of three years.
49. DDOT's Report also proposed the following revisions to the Applicant's proposed Loading Management Plan:
- (a) Schedule deliveries such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as not to compromise safety or impede street or intersection function;
 - (b) Schedule residential loading activities so as not to conflict with retail deliveries. All residential loading will need to be scheduled with the dock manager;
 - (c) Monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic except during those times when a truck is actively entering or exiting a loading berth; and
 - (d) Prohibit the scheduling of residential move-ins/move-outs within three hours of a scheduled event at Audi Field of at least 10,000 attendees.

ANC Report

50. ANC 6D submitted a resolution in support of the Project dated November 12, 2018 (the "ANC Report"), indicating that at its regularly scheduled and duly noticed public meeting of October 15, 2018, at which a quorum of commissioners was present, the ANC voted to support the Application, subject to submission of certain documents: (Ex. 30.)
- (a) A signed neighbor agreement with the ANC;
 - (b) A parking plan;
 - (c) A Dust and Air Quality Plan; and
 - (d) A neighbor agreement with 69 Q Street, S.W.
51. The ANC Report stated that "[t]he ANC is extremely impressed with the Applicant's proposal for a 100% affordable housing project at 1530 1st Street SW. Affordable housing

options are desperately needed in our community and throughout the city as the demand for affordable housing far exceeds the existing supply. The creation of 101 affordable housing units at this site is greatly appreciated by the ANC.” (Ex. 30.)

52. On November 13, 2018, prior to the Hearing, the Applicant submitted a signed Memorandum of Agreement (“MOA”) between the ANC and the Applicant, for the benefit of neighbors listed therein, addressing a number of issues related to the project. (Ex. 31.) In response to the specific concerns raised by the ANC, the Applicant agreed to the following:
 - (a) The Applicant will use all commercially reasonable efforts to minimize the generation of dust during the razing of the existing building and during construction;
 - (b) The Applicant will clean the exterior windows of adjoining properties semi-annually during construction and clean the exterior of adjoining properties at the end of construction; and
 - (c) The Applicant will coordinate with the developer of 69 Q Street, S.W. to provide air quality monitoring and implementation of an air quality monitoring process during the construction process.
53. On November 15, 2018, ANC Commissioner Moffatt submitted written testimony on behalf of the ANC reiterating the ANC’s support for the Application and authorizing him to testify in the place of Commissioner Rhonda Hamilton. Commissioner Moffatt noted that the Applicant and the ANC had entered into a MOA regarding the Project but noted that the Parking Plan address the limited amount of on-site parking was still outstanding. (Ex. 36.)

Hearing of November 15, 2018

54. At the Hearing, the Commission accepted Sean Pichon of PGN Architects as an expert in Architecture, Erwin Andres of Gorove Slade Associates as an expert in Transportation, and Stephen Varga of Cozen O’Connor as an expert in Land Use. Neil Mutreja of T.M. Associates and Wendell Smith of UPO were available for questions. (November 15, 2018 Public Hearing Transcript [“Nov. Tr.”], at 6.)
55. At the Hearing, the Applicant provided a presentation containing a detailed building signage plan and a revision of the streetscape provisions demonstrating conformance with the Buzzard Point Streetscape Design Guidelines. (Ex. 33A1-33A3.) The Applicant also brought a color and materials board for the Zoning Commission’s inspection. (Nov. Tr. at 10.)
56. The Applicant presented evidence of its prior discussions with DOEE on the viability of green building enhancements, provision of rooftop solar and funding options. (Nov. Tr. at 16-17.)

57. At the Hearing and in its post-hearing submissions, the Applicant provided an updated zoning tabulation, which reconciled the inconsistent project details OP noted in its November 8, 2018 report regarding the changes in lot area, gross floor area, the square footage for the residential and commercial areas, FAR, lot occupancy, the square footage of the public plaza, and the number of long-term bicycle spaces provided. (Ex. 29, 38; Nov. Tr. at 27.)
58. Elisa Vitale of OP testified in support of the Application. Ms. Vitale noted that the Applicant had provided responses to the requests for additional information raised in the OP Report. Ms. Vitale also noted that OP recommended that the Applicant continue to work with DOEE on the potential for rooftop solar and with DDOT on the public space process. (Nov. Tr. at 26-27.)
59. Jonathan Rogers of DDOT also testified in support of the application at the Hearing but noted that DDOT had some outstanding comments and questions for the Applicant, including: (Nov. Tr. 29-30.)
 - (a) Mr. Rogers noted that the Project was largely consistent with DDOT's public space standards but that the public space permitting process was still ongoing;
 - (b) Mr. Rogers sought confirmation from the Applicant as to whether it would accept DDOT's recommended changes and additions to the proposed TDM Plan;
 - (c) Mr. Rogers sought confirmation as to the number of long-term bicycle spaces that were proposed; and
 - (d) Finally, Mr. Rogers noted that DDOT intended to continue working with the Applicant to refine the proposed LDM Plan and loading maneuvers.
60. ANC Commissioner Roger Moffatt testified in support of the Application at the Hearing and noted that the MOU satisfied the majority of the ANC's concerns, but that the Applicant still needed to work with the ANC on the parking plan. (Nov. Tr. at 34.) The MOA fulfills ANC 6D's request that the Applicant submit and sign a neighbor agreement as confirmed by ANC 6D during the public hearing on November 15, 2018. (Nov. Tr. at 37.)
61. No persons testified in opposition to the Application at the Hearing.
62. The Commission determined that there were three remaining issues that the Applicant needed to address:
 - (a) The Commission determined that trucks would need to cross the adjacent property line to access the loading area to the rear of the Project. Accordingly, the Commission requested that the Applicant obtain an easement from the adjacent neighbor to allow access over that property line or, alternatively, update the loading design to obviate the need to cross the lot line; (Nov. Tr. at 24.)

- (b) The Commission also directed the Applicant to finalize the Parking Plan with the ANC; and (Nov. Tr. at 43.)
 - (c) Finally, the Commission requested clarification on the viability of enhanced environmental improvements recommended by DOEE. (Nov. Tr. at 45.)
63. The record was closed at the conclusion of the Hearing, except to receive additional submissions from the Applicant, as requested by the Commission, and responses thereto from DDOT, OP, and ANC 6D, if desired. (Nov. Tr. at 46-48.)

Post-Hearing Submissions

64. On December 3, 2018, the Applicant submitted its post-hearing submission addressing the comments from the Commission, OP, and the ANC. (Ex. 38-38C2.)
65. As directed by the Commission, the Applicant contacted the adjacent property owner to determine whether the Applicant could secure an easement over the adjacent property's lot line. (Ex. 38.) The Applicant stated that it was unable to come to an agreement with the neighboring property owner regarding an easement for access to the Project's loading area. Accordingly, the Applicant stated that it will incorporate the adjusted loading design, which does not require traversing the adjacent property. (Ex. 38A1-38A2.)
66. The Applicant also supplied a Supplemental Statement from Gorove/Slade agreeing to and incorporating the additional TDM and LDM Plan measures identified in the DDOT report. Specifically, the Applicant added the following measures to its TDM and Loading Management Plans: (Ex. 22, 38B.)
- (a) Applicant's TDM Plan Additions:
 - The Applicant will work with DDOT and goDCgo, DDOT's TDM program to implement TDM measures at the site;
 - The Applicant will share the full contact information of the TDM coordinator for the site with DDOT and goDCgo;
 - The Applicant will provide at least two shopping carts for residential use; and
 - The Applicant will offer residents either an annual carshare or Capital Bikeshare membership for a period of three years; and
 - (b) Applicant's LDM Plan Additions:
 - Schedule deliveries such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as to compromise safety or impede street or intersection function;
 - Schedule residential loading activities so as not to conflict with retail deliveries. All residential loading will need to be scheduled with the dock manager;
 - Monitor inbound and outbound truck maneuvers and ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic

except during those times when a truck is actively entering or exiting a loading berth; and

- Prohibit the scheduling of residential move-in/move-outs within three hours of a scheduled event at Audi Field of at least 10,000 attendees.
67. The Applicant also requested flexibility to the Final Plans to accommodate DDOT's loading access requirements. (Ex. 38.)
 68. The Applicant also detailed discussions with the ANC concerning the requested parking plan. The Applicant asserted that it had reached a verbal agreement with the ANC to exclude the Project from DDOT's Residential Parking Permit ("RPP") program in satisfaction of the requested parking plan. The ANC was served with the Applicant's December 3, 2018 post-hearing filings and did not submit a response. (Ex. 38.)
 69. The Applicant met with DOEE on November 13, 2018 to discuss the potential for adding solar energy panels to the Project. (Ex. 38.) Subsequently, DCSEU prepared an analysis of the energy savings available to the Project. The Applicant reached out to several solar companies and conducted meetings to determine the feasibility of the use of solar energy for the Project. The Applicant noted that discussions on the feasibility of incorporating solar energy remain ongoing. (Ex. 38.)
 70. On March 4, 2019, DDOT submitted a supplemental report ("DDOT Supplemental Report") responding to the Applicant's post hearing submissions. The DDOT Supplemental Report concluded that the Application's adjusted loading designs were acceptable and also noted that while the District is unable to restrict individual properties from the RPP program, the Applicant would be able to institute this restriction through a lease provision. (Ex. 43.)

CONCLUSIONS OF LAW

Design Approval

1. Due to the Property's location in the Capitol Gateway Zone, it is subject to design review by the Commission pursuant to the general design review criteria of Subtitle X § 604 and the Capitol Gateway Zone specific criteria of Subtitle K § 512.
2. Pursuant to Subtitle X § 600.1, the purpose of the design review process is to:
 - (a) *Allow for special projects to be approved by the Zoning Commission after a public hearing and a finding of no adverse impact;*
 - (b) *Recognize that some areas of the District of Columbia warrant special attention due to particular or unique characteristics of an area or project;*
 - (c) *Permit some projects to voluntarily submit themselves for design review under this chapter in exchange for flexibility because the project is superior in design but does not need extra density;*

- (d) *Promote high-quality, contextual design; and*
- (e) *Provide for flexibility in building bulk control, design, and site placement without an increase in density or a map amendment.*

General Design Review Criteria (Subtitle X § 604)

3. Subtitle X § 604 requires that in order for the Commission to approve a design review application it must:
 - (a) 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; (§ 604.5.)
 - (b) 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; (§ 604.6)
 - (c) Review the urban design of the site and the building according to the design criteria in § 604.7; and
 - (d) Find that the criteria of Subtitle X § 604.7 are met in a way that is superior to any matter-of-right development possible on the site. (§ 604.8.)
4. The Commission concludes that the Application meets the general design review criteria as elaborated below.

Subtitle X § 604.5(a) - Development is Not Inconsistent with the Comprehensive Plan (CP) & Public Policies and Programs

Land Use Element (CP § 300.1)

5. The Commission concludes that the Project is not inconsistent with the Land Use Element because:
 - (a) It will advance this element by redeveloping the vacant building 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 Vision Framework and Design Guide (the “Buzzard Point Plan”);
 - (b) The proposed Project design will blend with the designs of market-rate projects that are underway or planned for the surrounding neighborhood, including the immediately adjacent Phase I Building. 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); and

- (c) The Application 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 which is zoned RF-1. In addition, the existing apartment building on adjacent lot to the north is set back from the Property's northern lot line by 29 feet.

Transportation Element (CP § 401.1)

- 6. The Commission concludes that the Project is not inconsistent with the policies contained within the Transportation Element of the Comprehensive Plan because of 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 (CP § 501.1)

- 7. The Commission concludes that 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 Application will help the District achieve these policies by providing a mixed-use development that includes ground-floor commercial use and 101 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 H-1.3.1: Housing for Families.)

Environmental Protection Element (CP § 601.1)

- 8. The Commission concludes that the Project is not inconsistent with the policies of the Environmental Protection Element because:
 - (a) The Application will also improve environmental sustainability and storm water management on the Property by achieving a LEED-Silver designation under the LEED v.4 checklist for the Project;

- (b) The Project will incorporate a large green roof system and, depending on feasibility, roof-mounted solar panels; and (Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff and Policy E-3.2.1: Support for Green Building.)
- (c) The Project will help achieve these policies, 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.)

Economic Development Element

- 9. The Commission concludes that the Project is not inconsistent with the policies of the Economic Development Element because the Project will provide positive economic benefit both through the ground floor commercial use that is proposed, and the on-site services that will be provided to the residents of the building, including monthly on-site financial education classes. In addition, UPO CDC will provide access to offsite services including various construction, culinary arts, hospitality, and emergency medical technician training classes at UPO CDC 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).

Urban Design Element (CP § 901.1)

- 10. The Commission concludes that the Project will improve the urban design quality of First Street, S.W., a historic L'Enfant Plan street, by strengthening the street wall and respecting the 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. (Buzzard Point Plan at 6-7.) The Project will advance this vision through the ground-floor retail and substantial affordable housing that is proposed, as well as its 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 .(Policy UD-2.2.4: Transitions in Building Intensity.)

Historic Preservation Element (CP § 1001.1)

- 11. The Commission finds that the Project is not inconsistent 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, S.W., a L'Enfant Plan street, by strengthening the street wall, and respecting the 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.)

Lower Anacostia Waterfront/Near Southwest Area Element (CP § 1900.1)

12. The Commission finds that the Project is not inconsistent with the policies of the Lower Anacostia Waterfront / Near Southwest Area Element because the Project will support the revitalization of the Buzzard Point neighborhood into a mixed-use neighborhood by adding new commercial uses 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.)
13. 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. However, the Commission concludes that the project is not inconsistent with these elements because while the project does not enhance these elements it also does not contradict their intent. (CP §§ 800.1, 801.1, 1100.1, 1101.1, 1200.1, 1201.1, 1300.1, 1301.1, 1400.1, 1401.1.)

Subtitle X § 604.5(b) – Satisfaction of the General Special Exception Criteria

Subtitle X § 901.2(a) – In Harmony with the Purpose and Intent of the Zoning Regulations

14. The Commission concludes that the Project will be harmonious with the general purpose and intent of the Zoning Regulations and Zoning Maps and generally comply with the Zoning Regulations in terms of development standards. The Applicant is only requesting zoning relief from the requirements for loading, lot occupancy (third story only), court, and the plaza.

Subtitle X § 901.2(b) – No Adverse Effects on Neighboring Properties:

15. The Commission also concludes that the Project will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps because:
 - (a) The additional building bulk allowed by the requested relief is minimal;
 - (b) The Applicant has worked to stagger the building facades through projections, bays and recesses to vary and reduce the interplay between the Project and adjacent properties; and
 - (c) As shown in the Applicant's final architectural plans, the Project will be constructed of high-quality building materials and the Project will satisfy Buzzard Point streetscape guidelines ensuring that the Project is in harmony with the neighboring property and surrounding neighborhood.

16. The Commission accepts the Application’s argument that the design mitigates the impacts of the non-conforming lot occupancy, plaza, and courts, and the approved TDM and LDM Plans will mitigate the loading relief.

Subtitle X § 604.5(c) – Consistency with the Urban Design Criteria

17. The Commission concludes that the Project meets the third prong of the general design review criteria because it is consistent with each of the urban design criteria listed in Subtitle X § 604.7 as follows.

X § 604.7(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:*

18. The street frontage along First Street, S.W. has been designed to be safe, comfortable, and encourage pedestrian activity. The Project includes access to the below-grade parking garage via a 16-foot-wide public alley located to the rear of the Property so pedestrian movements across the frontage of the Property will be protected. The Project includes ground floor commercial uses with a distinct entryway along First Street, S.W. The Project’s ground floor includes active uses with clear, inviting windows. The Project’s design has minimized blank façades. The Project’s design also includes projections that help animate and enhance the building’s design. The Project includes streetscape improvements such as new sidewalk paving and landscaping, which complement the improvements that are part of the Phase I Building, even absent the plaza space. The streetscape generally complies with the Buzzard Point Streetscape Design Guidelines. All public space improvements, including the width of the sidewalks, will comply with DDOT requirements.

X § 604.7(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:*

19. Outdoor seating is proposed in public space along First Street, S.W. in front of the building for use by the building’s residential tenants, commercial tenants, and the surrounding community. The Project is not a waterfront development.

X § 604.7(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.*

20. Though the Property is not located along the District's major boulevards the proposed public space improvements still respect the existing urban form. 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. The Project does not infringe on any key landscape vistas or axial views of landmarks and important places.

X § 604.7(d) - Buildings strive for attractive and inspired façade design that:

- (1) *Reinforces the pedestrian realm with elevated detailing and design of first and second stories; and*
- (2) *Incorporates contextual and quality building materials and fenestration.*

21. As shown on the Applicant's architectural plans, the ground floor includes active uses with inviting windows, and the upper stories are designed with numerous windows and a varied façade composed of high-quality materials. (Ex. 38C1-38C2.) The pedestrian area along First Street, S.W. will have outdoor seating and will be in line with the Buzzard Point streetscape guidelines, which will reinforce the pedestrian realm.

X § 604.7(e) – Sites are designed with sustainable landscaping:

22. As shown on the Applicant's architectural plans, the Project will include a green roof and a courtyard for residents, both designed with sustainable landscaping. (Ex. 38C1-38C2.) In addition, the streetscape along First Street will be designed with sustainable landscaping.

X § 604.7(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.*

23. Forty-five 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. A new Capital Bikeshare station is proposed to be constructed near the corner of First Street, S.W. and Q Street, S.W. (as part of the zoning approval of the Phase I Building in Z.C. Order 17-13), 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.

Capital Gateway Zone Design Review

24. Pursuant to Subtitle K §§ 512.1©, 512.2, the proposed development at the Property is subject to design review and approval by the Commission since it is located in Square 656.
25. The Applicant must show that the proposed building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will meet the requirements of Subtitle K § 512.3 which include:
 - (a) *Help achieve the objectives of the Capitol Gateway defined in Subtitle K § 500.1;*
 - (b) *Help achieve the desired use mix, with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail, or service uses;*
 - (c) *Be in context with the surrounding neighborhood and street patterns;*
 - (d) *Minimize conflict between vehicles and pedestrians;*
 - (e) *Minimize unarticulated blank walls adjacent to public spaces through facade articulation; and*
 - (f) *Minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards.*

Subtitle K § 512.3(a) – Achieve the Objectives of the Capitol Gateway:

26. The Commission concludes that the Project meets the objectives of the Capitol Gateway District because the Project will be a mixed-use development, with all 101 residential units being designated as “affordable.” In addition to the residential units and related amenity space, there will be neighborhood-serving commercial uses on the ground floor.
27. The Property is also located within the boundaries of the Buzzard Point Plan. The Buzzard Point Plan specifically designates the Property for multifamily residential development. (*Id.* At 4.) Moreover, one of the overarching goals of the Buzzard Point Plan is to protect the existing public housing within the study area and create additional residential development. (*Id.* At 7.)

Subtitle K § 512.3(b) – Achieve the Desired Mix of Uses:

28. The Commission concludes that the Project helps achieve the desired mix of uses because in addition to the residential units, the Project also includes approximately 7,038 square feet on the ground floor devoted to neighborhood-serving commercial uses.

Subtitle K § 512.3© – In Context with Surrounding Neighborhood and Street Patterns:

29. The Commission concludes that the Project is in context with the surrounding neighborhood because:
 - (a) The massing of the Project has been reduced 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;

- (b) 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 adjacent building;
- (c) The distinct façade articulations at each elevation create a design that connects the building to the street frontage and complements nearby buildings; and
- (d) The existing apartment building is located 29 feet from the Property's northern lot line. This space includes an approximately 18-foot-wide open drive aisle separating the buildings.

Subtitle K § 512.3(d) – Minimize Vehicular-Pedestrian Conflicts:

30. The Commission concludes that the Project will minimize vehicular-pedestrian conflicts because there is no curb cut along the Property's frontage, thereby preventing potential pedestrian and vehicle conflicts. Instead, access to the loading area and below-grade parking will be provided via the 16-foot-wide rear alley network to the Property. The Applicant revised the Project design to ensure that access to the loading area can be accomplished without traversing the adjacent property.

Subtitle K §512.3© – Minimize Unarticulated Blank Walls Adjacent to Public Spaces:

31. The Commission concludes that the Project meets this criterion because the building offers extensive façade articulation across all its elevations abutting public space. 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. On the Project's frontage there is wood detailing at the ground level and bay projections beginning at the third story.

Subtitle K § 512.3(f) – Minimize Environmental Impacts:

32. The Commission concludes that the Project will minimize environmental impacts because the Applicant is providing an expansive green roof and is pursuing LEED-Silver certification for the Project under LEED v4, which is consistent with the Green Building Act and DHCD's funding requirements. The Applicant is also exploring providing solar panels on the Project's roof.

Zoning Relief

33. Pursuant to Subtitle K § 512.7, the Commission may hear and decide any additional requests for variance relief needed for the Property together with the application for design review approval. The Applicant is seeking variance and special exception relief residential loading, lot occupancy, court, and plaza requirements.

Variance Relief

34. Pursuant to Subtitle K § 512.7, the Applicant is seeking area variances from the residential loading requirements of Subtitle C § 901.1 and the plaza requirements of Subtitle K § 504.13.

35. The Commission is authorized to grant an area variance where it finds that three conditions exist:
- (a) The property is affected by exceptional size, shape, or topography or other extraordinary or exceptional situation or condition;
 - (b) The owner would encounter practical difficulties if the Zoning Regulations were strictly applied; and
 - (c) 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 Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).)

Exceptional Condition or Situation

36. The Commission accepts the Applicant's argument that the site conditions of the Property, including: a relatively narrow lot, limited street frontage on First Street, and an existing wide public sidewalk, constitute an exceptional condition that restricts the Applicant's ability to meet both the loading and plaza requirements. (Findings of Fact ["FF"] 38-39.)

Practical Difficulty – Loading:

37. The Commission finds that strict application of the Zoning Regulations would result in a practical difficulty to the Applicant because providing the required dedicated loading bay would require the Applicant to reduce the amount of ground-floor commercial space. The Commission accepts the Applicant's statements that the design of the residential lobby cannot be substantially altered, and therefore, the Applicant would need to remove one of the commercial leasing bays in order to provide the loading facilities.
38. In order to provide a 30-foot loading berth, the Applicant would also be required to install a curb cut along the Property's frontage because the required loading cannot be accommodated adjacent to the alley or in the below-grade parking garage. The Commission concludes that the Property has limited street frontage along First Street and that DDOT has indicated that it would be unlikely to approve a curb cut.
39. Accordingly, the required loading berth would significantly constrain the Applicant's ability to provide ground floor, neighborhood-serving commercial uses and minimize conflicts between vehicles and pedestrians as specified in Subtitle K § 512.3. Moreover, the provision of a curb cut along First Street, S.W. is specifically discouraged by Subtitle X § 604.7(a)(2).

Practical Difficulty – Plaza

40. As to the requested plaza relief, the Commission finds that the narrow frontage of the lot would require a plaza to be set back an additional 14 feet into the ground floor of the building. The Commission finds that a redesign to include the required plaza would compromise the design standards for general lobby uses, and/or require the removal of one of the leasing bays. The redesign would likely result in a jagged, cantilevered design, creating a dark, cavernous condition along the ground floor streetscape, subverting the design requirements of Subtitles K and X of the Zoning Regulations.

No Harm to Public Good or Zone Plan – Loading

41. The Commission finds that the requested loading variance will not result in harm to the public good or zone plan. The Applicant anticipates that the proposed 21-foot,6-inch-service/delivery space to the rear of the Project will adequately serve the loading needs of the proposed residential and commercial uses. The Project’s 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.
42. The Applicant revised the Project design to ensure that vehicles can access the loading area without encroaching on neighboring properties.
43. As detailed in the CTR report, the Commission finds that the proposed LDM plan will adequately serve the loading needs for the Project. (Ex. 18.) The Applicant will implement a loading management plan for the Project, which will include the following elements:
- (a) A loading manager shall be designated by the building management. The manager shall coordinate with residents to schedule deliveries and shall be on duty during delivery hours. The loading manager shall oversee both the rear loading area and any loading that would need to occur on First Street;
 - (b) Trucks utilizing the loading area shall be restricted to 23 feet in length. The few trucks longer than 23 feet shall be required to load curbside utilizing the metered spaces on First Street;
 - (c) Residents shall be required to schedule move-in and move-outs with the loading manager through leasing regulations;
 - (d) The loading manager shall coordinate with trash pick-up to minimize the time trash trucks need to use the loading area. Trash services shall be serviced by a private company that utilizes trash trucks able to be accommodated in the loading area provided on site;
 - (e) All trucks accessing the Project shall not idle and must follow all District guidelines for heavy vehicle operation including but not limited to the Air Quality Regulations (Chapter 9 § 900 of Title 20 of the District of Columbia Municipal Regulations),

the recommendations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System; and

- (f) The loading manager shall be responsible for disseminating DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with District laws and DDOT's truck routes. The loading manager shall also post these documents in a prominent location.
44. The Applicant will also incorporate the additional loading management plan elements as recommended by DDOT in their report: (Ex. 22.)
- (a) Schedule deliveries such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver shall be directed to return at a later time when a berth will be available so as to not compromise safety or impede street or intersection function;
 - (b) Schedule residential loading activities so as not to conflict with retail deliveries. All residential loading shall be scheduled with the dock manager;
 - (c) Monitor inbound and outbound truck maneuvers and ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic except during those times when a truck is actively entering or exiting a loading berth;
 - (d) Prohibit the scheduling of residential move-in/move-outs within three hours of a scheduled event at Audi Field of at least 10,000 attendees; and
 - (e) Install at least one electric vehicle charging station in the parking garage.

No Harm to Public Good or Zone Plan – Plaza

45. The Commission finds that the requested plaza variance will not result in harm to the public good or zone plan. The Commission notes that the existing public space is already substantial, and that the Applicant proposes outdoor seating in public space along First Street, S.W. and other improvements to the surrounding streetscape, which will serve to activate the public space in a manner which supports the intent of the Zoning Regulations.

Special Exception Relief

46. The Applicant seeks special exception relief from the lot occupancy requirements of Subtitle K § 504.6 and the court requirements of Subtitle K § 504.10.
47. The Commission is authorized to grant special exception relief where it finds that the special exception:
- (a) *Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*

- (b) *Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and*
- (c) *Subject in specific cases to special conditions specified in the Zoning Regulations.² (See Subtitle X § 901.2; see *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1085 (D.C. 2016).)*

Harmony with Purpose and Intent of Zoning Regulations and Maps

48. The Commission finds that the Project is generally in harmony with the purpose of the Zoning Regulations and the Comprehensive Plan. The Project’s design and requested relief are in harmony with the purpose of the Capital Gateway Zone as the Project will provide both new affordable multi-family housing and commercial space in line with the Comprehensive Plan as detailed above. Further, the additional bulk requested is minimal and will facilitate the Project’s ability to provide additional housing and retail space to the surrounding neighborhood. In furtherance of the goals of the Capital Gateway Zone, the Project will also be in context with the surrounding neighborhood and street patterns as it will be built with high quality materials and will have a varied façade compatible with the surrounding development. Further, the Project will satisfy the Buzzard Point streetscape guidelines, which will help provide the neighborhood with a continuous and welcoming street pattern.

No Adverse Effects

- 49. The Commission notes that the Applicant is only proposing additional building bulk on the third floor and the third floor only exceeds the permitted lot occupancy by .67%.
- 50. The Commission concludes that the effect of the additional lot occupancy has been mitigated by the staggered building façades which reduce the interplay between the Project and adjacent properties.
- 51. With regards to the courts, the Commission concludes that the closed courts 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.
- 52. Accordingly, the Commission finds that the Project meets the criteria for special exception relief pursuant to Subtitle K § 504.6 and Subtitle K § 504.10 and that the Project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map.

“Great Weight” to the Recommendations of OP

53. The Commission must give “great weight” to the recommendations of OP 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); see Subtitle Z § 405.8.)

² There are no special conditions for lot occupancy or court relief in the CG-4 zone.

54. The Commission carefully considered the OP Report and OP’s testimony, and, as explained in this decision, finds its recommendation to grant the Application persuasive.

“Great Weight” to the Written Report of the ANC

55. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976. (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.); *see* Subtitle Y § 406.2.) To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

56. The Commission carefully considered the issues and concerns stated in ANC 6D’s report and finds that the Applicant has satisfied the ANC’s concerns. The Commission notes that the ANC did not submit a formal response regarding the parking plan but provided a verbal agreement per the Applicant.

DECISION

In consideration of the case record and Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for design review approval and special exceptions, subject to the following guidelines, standards, and conditions.

1. The Project shall be built in accordance with the architectural drawings submitted to the Commission on December 3, 2018 (the “Final Plans”) at Exhibits 38C1-38C2, the modified loading design at Exhibits 38A1-38A2, and the guidelines, conditions, and standards below.
2. Transportation Demand Measures: **Prior to the issuance of the First Certificate of Occupancy for the Building**, the Applicant, and successors in title, shall demonstrate that it has implemented the following TDM measures **and shall adhere to such measures for the life of the Project:**
 - (a) The Applicant will identify a TDM Leader (for planning, construction, and operations) at the building, who shall act as a point of contact with DDOT/Zoning Enforcement and shall provide annual updates to the residents and other interested individuals. The TDM Leader shall work with residents to distribute and market various transportation alternatives and options;
 - (b) The Applicant shall provide TDM materials to new residents in the Residential Welcome Package materials;

- (c) The Applicant shall meet zoning requirements by providing approximately 45 long-term bicycle parking spaces in the building garage;
- (d) Eight short-term bicycle parking spaces shall be provided along First Street, S.W., meeting zoning requirements;
- (e) All parking on site shall be priced at market rates, at minimum, defined as the average cost for parking in a quarter-mile radius from the site;
- (f) The Applicant shall unbundle the cost of residential parking from the cost of lease or purchase of each unit;
- (g) The Applicant shall provide each unit's incoming residents with an \$100 SmarTrip Card. A proactive marketing strategy shall be provided to ensure residents are aware of this benefit;
- (h) The Applicant shall provide a bicycle repair station to be located in the secure long-term bicycle storage room;
- (i) The Applicant shall provide an on-site business center to residents with access to copier, fax, and internet services;
- (j) The Applicant shall install a Transportation Information Center Display (electronic screen) within the residential lobbies containing information related to local transportation alternative;
- (k) The Applicant shall work with DDOT and goDCgo, DDOT's TDM program to implement TDM measures at the site;
- (l) The Applicant shall share the full contact information of the TDM coordinator for the site with DDOT and goDCgo;
- (m) The Applicant shall provide at least two shopping carts for residential use; and
- (n) The Applicant shall offer residents either an annual carshare or Capital Bikeshare membership for a period of three years.

3. **Loading Management: Prior to the issuance of the First Certificate of Occupancy for the Building**, the Applicant, and successors in title, shall demonstrate that it has implemented the following Loading Management Plan **and shall adhere to the plan for the life of the Project:**

- (a) A loading manager shall be designated by the building management. The manager shall coordinate with residents to schedule deliveries and shall be on duty during

delivery hours. The loading manager shall oversee both the rear loading area and any loading that would need to occur on First Street;

- (b) Trucks utilizing the loading area shall be restricted to 23 feet in length. The few trucks longer than 23 feet shall be required to load curbside utilizing the metered spaces on First Street;
 - (c) Residents shall be required to schedule move-in and move-outs with the loading manager through leasing regulations;
 - (d) The loading manager shall coordinate with trash pick-up to minimize the time trash trucks need to use the loading area. Trash services shall be serviced by a private company that utilizes trash trucks able to be accommodated in the loading area provided on site;
 - (e) All trucks accessing the property shall not idle and must follow all District guidelines for heavy vehicle operation including but not limited to the Air Quality Regulations (Chapter 9 § 900 of Title 20 of the District of Columbia Municipal Regulations), the recommendations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System;
 - (f) The loading manager shall be responsible for disseminating DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with District laws and DDOT's truck routes. The loading manager shall also post these documents in a prominent location;
 - (g) Deliveries shall be scheduled such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver shall be directed to return at a later time when a berth will be available so as not to compromise safety or impede street or intersection function;
 - (h) Residential loading activities shall be scheduled so as not to conflict with retail deliveries. All residential loading shall be scheduled with the dock manager;
 - (i) Inbound and outbound truck maneuvers shall be monitored and trucks accessing the loading dock shall not block vehicular, bike, or pedestrian traffic except during those times when a truck is actively entering or exiting a loading berth; and
 - (j) Scheduling of residential move-in/move-outs within three hours of a scheduled event at Audi Field of at least 10,000 attendees shall be prohibited.
4. The Applicant shall install at least one electric vehicle charging station in the parking garage.

5. LEED:
 - (a) **The Applicant shall submit with its building permit application**, a LEED checklist indicating that the Project includes design features such that the building achieves LEED-Silver certification; and
 - (b) **Within 12 months after the issuance of the Certificate of Occupancy for the Building**, the Applicant shall provide evidence to the Zoning Administrator that it has secured Silver Certification from the U.S. Green Building Council under the LEED-v.2009 rating system.
6. The Project shall be excluded from DDOT's Residential Parking Permit program.
7. The Applicant shall have design flexibility from the Final Plans in the following areas:
 - (a) 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 or appearance of the building;
 - (b) To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Final Plans;
 - (c) 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 gross square footage, or the number of residential units within the gross floor area, in order to accommodate demand for larger units or permitting issues;
 - (d) To make minor variations to the location, attributes and general design of the streetscape within public space to comply with the requirements of and the approval by the District Department of Transportation Public Space Division, without changing the overall design intent, the general location and dimensions of landscaping and hardscaping, or the quality of materials;
 - (e) 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;
 - (f) To make minor refinements to the building's details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, window mullions and spacing, or any other changes that otherwise do not significantly alter the exterior design as shown on the final plans to comply with the District of Columbia Building Code. Any refinements may not substantially change the buildings' external configurations, appearance, proportions, or general design intent;


- (g) To locate retail entrances in accordance with the needs of the retail tenants; and to vary the façades 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:
 - (i) Office (Subtitle B § 200.2(x));
 - (ii) Retail (Subtitle B § 200.2(cc));
 - (iii) Services, General (Subtitle B § 200.2(dd));
 - (iv) Services, Financial (Subtitle B § 200.2(ee)); and
 - (v) Eating and Drinking Establishments (Subtitle B § 200.2(j));
 - (h) To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved architectural drawings; and
 - (i) To add solar panels to the roof, provided they comply with all applicable zoning regulations and building code requirements, and do not diminish the size of or interfere with the green roof shown on the plans.
8. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.1 et seq. (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination 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.

VOTE (March 11, 2019): 5-0-0 (Peter A. Shapiro, Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on January 17, 2020.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING