

APPLICANT'S DRAFT ORDER

ZONING COMMISSION OF THE DISTRICT OF COLUMBIA

Z.C. ORDER NO. 19-23

Z.C. Case No. 19-23

Wells REIT II 80 M Street LLC

January 27, 2020

Pursuant to notice, the Zoning Commission of the District of Columbia (the “**Commission**”) held a public hearing on January 9, 2020 to consider the application of Wells REIT II 80 M Street LLC (the “**Applicant**”) for Design Review approval for the proposed renovation of and addition to the existing building (the “**Project**”) located at 80 M Street SE (Square 699, Lot 28) (the “**Property**”) in the D-5 Zone District and M and South Capitol Streets Sub-Area (“**Application**”). The Applicant requested Design Review pursuant to Subtitle I §§ 616.6 and 616.8 of Title 11 of the District of Columbia Municipal Regulations (“**DCMR**”) (the “**Zoning Regulations**”, to which all references are made unless otherwise specified).

The Commission considered the application for the Project pursuant to Subtitles X and Z. For the reasons below, the Commission hereby **APPROVES** the application.

FINDINGS OF FACT

Notice

1. Pursuant to Subtitle Z § 301.6, on August 20, 2019, the Applicant mailed a Notice of Intent to file a Design Review application to all property owners within 200 feet of the Property and to Advisory Neighborhood Commission (“**ANC**”) 6D, the “affected ANC” per Subtitle Z § 101.8. The Applicant also thereafter presented the Project to ANC 6D. (Ex. 2D.)
2. On October 22, 2019, the Applicant submitted the Application as owner of the Property, requesting Design Review approval for the Project. (Ex. 1–2E.)
3. Pursuant to Subtitle Z § 402, on November 4, 2019 the Office of Zoning (“**OZ**”) published the Notice of Public Hearing. (Ex. 5 and 6.)

The Property

4. The Property contains approximately 45,117 square feet (or 1.03 acres) of land area and comprises half of the north side of the block between Half and First Streets along M Street. (Ex. 2.)
5. The Property is bound by M Street SE to the south, 1st Street SE to the east, L Street SE to the north, and Cushing Place SE to the west. The Property is located one block north of Nationals Park and one block west of the Navy Yard-Ballpark Metrorail Station. (Ex. 2)

and 9A.)

6. The surrounding area consists primarily of a mix of high density uses, including office buildings, hotels, and multifamily residential buildings, all with a variety of ground floor retail, service, and eating and drinking establishment uses. The vicinity includes areas zoned D-5, CG, SEFC-1A, and MU-10, with areas zoned RA-2 further east and areas zoned RF-1 further southwest of the Property. (Ex. 2 and 9A.)
7. The Property is located in the D-5 zone and the M and South Capitol Streets Sub-Area. The objectives of the M and South Capitol Streets Sub-Area are to ensure the preservation of this historically important axial view of the Capitol Dome and further the development of a high-density mixed-use corridor north of the Capitol Gateway neighborhood. (Subtitle I § 616.1.)

Application

8. The Applicant proposes to renovate the existing seven (7)-story office building and construct a two (2)-story addition with a habitable penthouse. The existing building consists of approximately 292,100 square feet of gross floor area (“GFA”). The Project will add approximately 87,506 square feet of GFA, for a total of approximately 378,266 square feet of GFA, and will include a habitable penthouse with approximately 24,516 square feet of gross square feet.¹ (Ex. 2 and 9A.)
9. The building is currently 89 feet, nine (9) inches in height, and the proposed addition will result in the building having a height of 128 feet, nine (9) inches, within the maximum 130 feet permitted in the zone.² The proposed addition will be devoted to office use, with a portion of the penthouse also being devoted to shared amenity space for office tenants. (Ex. 2, 9 and 9A.)
10. The Project will create a vertical addition consisting primarily of new glass curtainwall with metal trim on all facades. The vertical expansion will have metal panel and terracotta accents that will complement the glass façade and will include a new canopy of roof structures consisting of metal panel and wood soffit and supported by “Y”-shaped steel columns. The Project will maintain the existing curtainwall glass façade at the south portion of the building and the existing brick facades along the east, west, and north sides of the building. The columns at the ground level will receive new metal panel column covers with accents, and a new metal panel apron will highlight a new wood soffit at the existing recessed entry. The proposed wood soffit will have a three-dimensional gradient design that mimics the geographical convergence of the Potomac and Anacostia Rivers. The building entry will be relocated one column bay to the east in order to better highlight

¹ The proposed GFA includes approximately 4,458 square feet (or approximately 0.1 FAR) of penthouse habitable space that exceeds the maximum 0.4 FAR of habitable space excludible from FAR under Subtitle C § 1501.3(c). The above-referenced total of 24,516 square feet of habitable penthouse space includes the space that counts towards the building’s FAR. (Ex. 2 and 9A.) The Applicant is utilizing density credits in order to construct nonresidential FAR in excess of the maximum 6.5 FAR permitted in the D-5 zone.

² A maximum height of 130 feet is permitted in the D-5 zone for properties fronting a street right-of-way with a width of 110 feet or greater such as 1st Street SE. (Subtitle I § 540.1.)

the corner of the building at 1st and M Streets and coordinate with the new wood soffit feature. Interior work will include updates to the lobby and expansion of the existing fitness center on the ground floor. The Project will include a lighting plan to ensure that the proposed renovations and addition do not result in any adverse impact on nearby residences, as well as a signage plan. (Ex. 2, 9A, and 19B.)

11. A prominent feature of the Project will be the use of mass timber for construction of the proposed addition, which provides environmental benefits as this type of construction is capable of achieving a total carbon footprint equal to only one-third of similarly sized steel and concrete buildings. Timber will be incorporated in both the internal support systems and interior design of the upper-story addition, and it will also be communicated at the street level by way of the wood soffit feature and reiterated in the soffits proposed for the 8th floor and penthouse terraces. These features, along with the other aspects of the design discussed above, will strengthen the building's presence at the corner of M and First Streets and improve the overall streetscape. (Ex. 2 and 9A.)
12. The Applicant filed a Transportation Statement for the Project on December 10, 2019, (Ex. 8) and an updated Transportation Statement on December 20, 2019, (Ex. 9C) which included the Applicant's proposed Transportation Demand Management ("TDM") measures and Loading Management Plan ("LMP") measures for the Project.
13. On December 20, 2019, the Applicant filed a prehearing submission that included: updated architectural plans; a shadow study prepared for the ANC showing the impact of the proposed addition on the Velocity condominium building to the north; and the updated Transportation Statement noted above. (Ex. 9-9C.)

Relief Requested

14. The Application requests Design Review approval pursuant to Subtitle I §§ 616.6 and 616.8 of the Zoning Regulations.

Community Outreach

15. As stated in the Application and at the public hearing on the Application, the Applicant made several presentations to ANC 6D regarding the Project — on October 15, 2019, October 21, 2019, and on December 9, 2019. The Applicant also met with the Office of Planning ("OP") and met with residents of the Velocity condominium building located across L Street to the north of the Property on November 12, 2019. (Ex. 2; Tr. at ____.) Following the public hearing on the Application, the Applicant met with residents of the Velocity building again on January 15, 2020, regarding the Project.

OP Report:

16. OP filed a report, dated December 30, 2019 ("**OP Report**"), recommending approval of the Application and testified accordingly at the public hearing. OP examined the Project against the design review criteria and found that the Project satisfies each relevant condition. OP also found that the Project is not inconsistent with the designation for the

Property on the Comprehensive Plan's Future Land Use Map and Generalized Policy Map. Similarly, OP concluded that the Project conforms to the Comprehensive Plan and furthers policies in the Comprehensive Plan's Land Use, Transportation, Environmental Protection, Economic Development, and Urban Design Elements. (Ex.11.)

17. OP's report requested that the Applicant provide a LEED checklist for the Project, a calculation of green roof area, a plant material palette for the ground level and roof terrace, and a signage plan, all of which the Applicant included in the materials in support of the hearing presentation submitted on January 9, 2020. (Ex. 19A and 19B.)

DDOT Report

18. DDOT filed a report dated December 27, 2019 ("**DDOT Report**"), stating that it had no objection to the approval of the Project conditioned on the Applicant implementing the TDM and LMP measures included in the updated Transportation Statement.

ANC Report

19. At its regularly scheduled and duly noticed public meeting on December 9, 2019, ANC 6D voted not to oppose the application for design review. (Ex. 15.) The ANC's report notes that the Applicant prepared a sun/shadow study at the ANC's request (Ex. 9B as updated in Ex. 19A), which shows shadows cast on three additional floors of the Velocity condominium building during the winter months. The ANC noted that it is mindful of concerns regarding additional construction in the neighborhood and is actively working with DDOT to improve pedestrian safety at the intersection of 1st and L Streets SE. The ANC stated that it supports the Project's use of sustainable materials and the incorporation of local geography, specifically the confluence of the Anacostia and Potomac rivers, into the design.

Other

20. Several residents of the Velocity building submitted letters in opposition to the Project and testified in opposition at the public hearing. (Ex. 14, 16, 17 and 18; Tr. at __.) Their concerns regarding the Project were: impacts to views available from south-facing units and from the Velocity building's rooftop amenities; impacts to light from the proposed addition; questions regarding the Applicant's shadow study; the potential impact to pedestrian and bicycle safety created by additional shadows being cast on the intersection of 1st and L Streets SE; construction impacts; increased development in the surrounding area; and potential environmental impacts from the proposed addition.

Parties

1. Apart from the Applicant and the ANC, there were no parties to the proceeding. One of the residents of the Velocity building, Jordan Cox, filed a request for party status on January 7, 2020, two days before the hearing, as well as a request to waive the 14-day filing deadline for party status requests. (Ex. 13 and 13A.) At the public hearing, the Commission voted to deny the request to waive the filing deadline, finding that Mr. Cox had sufficient notice

of the Application to submit a timely party status request and did not show cause for the requested waiver. (Tr. at __.) Further, the Commission determined that, even if it were to reach the merits of Mr. Cox's party status request, his request did not meet the standard for party status because he had failed to demonstrate that he would be uniquely affected by the Project in a manner different from other residents of the Velocity building with units on the south side facing the Project.

Public Hearing

2. After proper notice, the Commission held a hearing on the Application on January 9, 2020. David Cheikin testified on behalf of the Applicant, as well as Tom Corrado of Hickock Cole Architects, the project designer.
3. Jordan Cox, Bob Jacobs, and Caroline Ash, all residents of the Velocity condominium building, testified in opposition to the Project.
4. At the hearing, the Applicant presented the Project and responded to questions from the Commission, including discussing the Applicant's outreach efforts with the ANC and Velocity residents.
5. At the conclusion of the hearing, the Commission asked the Applicant to meet again with the Velocity residents in order to provide more general information regarding the proposed addition and Project construction and to submit a supplemental filing providing an update on that meeting. The Commission also asked the Applicant to provide additional information as to whether a rooftop solar array was feasible as part of the Project and the Applicant's projected contribution to the District's Affordable Housing Trust Fund payment triggered by the proposed penthouse habitable space.

Post Hearing Submissions

6. On January 20, 2020, the Applicant filed a post-hearing submission with responses to the issues raised by the Commission at the January 9, 2020 hearing. In the submission, the Applicant provided an update regarding its meeting with the Velocity residents held on January 15, 2020, as well information regarding the challenges associated with installing solar panels on the penthouse roof and the projected Affordable Housing Trust Fund payment for the proposed penthouse habitable space. (Ex. __.)
7. On January 20, 2020, the Velocity residents who testified at the hearing letters regarding the January 15, 2020 meeting with the Applicant and stated [. . .].
8. On January __, 2020, ANC 6D submitted a letter stating [. . .].

CONCLUSIONS OF LAW

Design Approval

1. 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.
2. The Commission has jurisdiction to grant Design Review approval for the proposed development pursuant to Subtitle I §§ 616.6, 616.8, and 701.1 of the Zoning Regulations.
3. The Commission makes the following conclusions of law based on the information provided in the record including testimony provided at the hearing, the Applicant's statements, the OP report, the DDOT report, the ANC's letter and the letters submitted by the residents of the Velocity condominium building.

M and South Capitol Streets Sub-Area Design Review Criteria (I § 701.2(a))

4. The Commission concludes that the Application meets the design review criteria applicable to the M and South Capitol Streets Sub-Area as discussed below.

§ 701.2(a)(1) - The Project will help achieve the objectives of the sub-area, as set forth in Subtitle I, Chapter 6.

The Project will achieve the objectives of the M and South Capitol Streets Sub-Area that are set forth above and outlined in Subtitle I § 616.1. The Property, located between Half and First Streets SE, does not abut any of the axial thoroughfares running from the Capitol, such as South Capitol Street or New Jersey Avenue, and thus the Project will have no impact on the axial views of the Capitol Dome. The Project will further the development of a high-density mixed-use corridor north of the Capitol Gateway neighborhood by updating the existing building and strengthening the stock of commercial office buildings in the area, which will help to continue generating an appropriate level of daytime activity in the neighborhood.

§ 701.2(a)(2) - The Project will be in context with the surrounding neighborhood and street patterns.

The Project is consistent with the other development and uses in the surrounding area, which consist primarily of a mix of high-density office buildings, hotels, and multifamily residential buildings, as well as National Park, one block south of the Property. The surrounding buildings are generally 10-12 stories in height and, like the existing building

on the Property, focus pedestrian entrances along M and First Streets, with service access more frequently accommodated along L Street.

§ 701.2(a)(3) - The Project will minimize conflict between vehicles and pedestrians.

The Project will maintain the existing vehicular access to the building off of L Street. This removes loading facilities and the garage entrance from the primary designated segment of M Street, minimizing any potential conflicts with pedestrian traffic, which is largely concentrated on M Street.

§ 701.2(a)(4) - The Project will minimize unarticulated blank walls adjacent to public spaces through façade articulation.

The proposed building facades are highly articulated and defined and incorporate high-quality building materials. The proposed vertical addition will consist of glass curtainwall with metal trim on all facades and metal panel and terracotta accents to complement the glass façade. The building columns at the ground level will receive new metal panel column covers with accents, and a new metal panel apron will highlight a new wood soffit at the existing recessed entry. The design will elevate the building's street presence by strengthening focus at the corner of M and First Streets and incorporating the fine definition of the wood soffit features.

§ 701.2(a)(5) - The proposed building will minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards.

The Project is pursuing LEED certification for new construction. Some of the key “green” features being pursued include low flow plumbing fixtures, green roof, mass timber structure, a VRF mechanical system, and energy efficient destination dispatch elevators. These features will minimize the impact of the Project on the environment and will further the District's environmental and sustainability policy objectives.

General Design Review Criteria (X § 604)

5. Section 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 (X § 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 (X § 604.6);*
 - (c) *review the urban design of the site and the building according to certain enumerated criteria set forth below (X § 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 (X § 604.8).*

6. The Commission concludes that the Application meets the general design review criteria as elaborated below.

Not Inconsistent with the Comprehensive Plan (X § 604.5)

7. The Commission concludes that the Application meets the first prong of the general design review criteria — to not be inconsistent with the Comprehensive Plan —because the Application does not contradict any provisions of the Comprehensive Plan and in fact furthers several principles and elements of the Comprehensive Plan as detailed below.
8. The Future Land Use Map of the Comprehensive Plan designates the Property as appropriate for high density commercial uses. The proposed development, with an overall FAR of 8.38 and a height of 128 feet, 9 inches is consistent with this designation. The office provides a daytime presence in the community and complements the existing uses in the neighborhood.
9. In addition, the Commission concludes that the Project furthers the following relevant elements of the Comprehensive Plan.
 - a. Land Use Element. The Project furthers the following policies contained in the Land Use Element: *Policy LU-1.1.3: Central Employment Area; Policy LU-1.1.4: Appropriate Uses in the CEA; Policy LU-1.1.5: Urban Mixed Use Neighborhoods; Policy LU-1.3.1: Station Areas as Neighborhood Centers*; by contributing to the high-density mixed-use neighborhood in Navy Yard, which is within the Central Employment Area. The renovated and expanded office building will contribute to the daytime activity in the area, which will help the area development to capitalize on the Navy Yard-Ballpark Metrorail Station. The Project will introduce new office space into the Central Employment Area and make the existing office building a more dynamic building contributing to the streetscape and design character of the neighborhood.
 - b. Urban Design Element. The Project furthers the following policies contained in the Urban Design Element: *Policy UD-2.2.5: Creating Attractive Facades*; by contributing to and complementing the existing urban fabric in the surrounding area. The glass curtain wall and proposed accents of the addition, as well as the building's new features and revised entrance, will provide an attractive design that will enhance the area. The unique wood soffit designs at the ground level and upper-story terrace and the steel Y-shaped supports and column motif will create visual interest and elevate the building's public presence.
 - c. Economic Development Element. The Project furthers the following policies contained in this element: *Policy ED-1.1.1: Core Industries; Policy ED-1.1.2: Economic Linkages; Policy ED-2.1.1: Office Growth; Policy ED-2.1.4: Diversified Office Options; Policy ED-2.1.5: Infill and Renovation; Policy ED-3.1.1: Neighborhood Commercial Vitality*; by renovating and expanding the existing office building, building on the growth of the Navy Yard neighborhood and

increasing the supply of commercial office space available in the area. The Project will strengthen the area as a commercial center and increase daytime activity in the neighborhood.

- d. Lower Anacostia Waterfront and Near Southwest Area Element. The Project furthers the following policies contained in this element: *Policy AW-1.1.3: Waterfront Area Commercial Development*; *Policy AW-2.3.4: M Street Southeast*; by promoting M Street SE and the broader Navy Yard and Waterfront area as a primary commercial corridor. The Project will increase the office supply in the area and contribute to the high-density mix of uses in the immediate vicinity. The newly-renovated building will add a compelling design that contributes to the overall architectural quality in the area and further defines the character of the neighborhood.
- e. Environmental Protection Element. The Project furthers the following policies contained in this element: *Environmental Protection Element Policy E-3.1.2; 613.3 Policy E-3.2.1: Support for Green Building*; *Policy E-5.1.1: Low Impact Development and Green Building Methods for the District*; by using the new mass timber construction method that offers environmental benefits and a reduced carbon footprint.

Satisfaction of the General Special Exception Criteria (X § 604.6)

10. The Commission concludes that Project satisfies second prong of the general design review criteria by meeting the general special exception criteria of Subtitle X, Chapter. The Commission concludes that the Project will be harmonious with the general purpose and intent of the Zoning Regulations and Zoning Maps for the D-5 zone and comply with the Zoning Regulations in terms of development standards. The Project height and density are consistent with that envisioned for the D-5 zone, and the Project will introduce an attractive and interesting design to the area that strengthens the building's corner presence and contributes to the pedestrian streetscape. The Project will also create more office space in the Central Employment Area and enable the building to accommodate a new single tenant in furtherance of the District's economic development goals.
11. 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 the Project is designed to fit in and operate compatibly with neighboring properties and uses. The Project is in keeping with the scale of density and height of the surrounding buildings, which consist largely of 10-12 story commercial and residential buildings, and fits appropriately into that context. It renovates and expands an existing office use, which will complement the mix of uses in Navy Yard and continue to generate daytime commercial activity in the area. The Applicant has thoughtfully designed the building to minimize any impacts on adjacent properties, including the Velocity condominium building to the north, and the Project will maintain the current site circulation that serves to mitigate any transportation impacts associated with the building.

Consistency with the Urban Design Criteria (X § 604.7)

12. 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 and provided in italics below.

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:*

The Project will contribute to the streetscape and pedestrian environment, shifting the building entrance slightly east to reemphasize the corner at M and First Streets and strengthen the building's presence at this intersection. The addition will create an attractive building with a compelling design and mix of materials to enliven the block and improve the pedestrian experience at this location. The corner emphasis in the design will better animate the streetscape with the wood soffit features and steel Y-shape supports and columns. The Project will maintain the existing vehicular circulation, with access on L Street, which maintains the greatest deference to the pedestrian traffic on M Street, which is the clear axion with the Metrorail station.

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:*

While the Project does not modify public space, the existing building entrance at the corner of M and First Streets will provide a newly-enlivened open seating area on private property, and the Project will provide dynamic gathering space with the introduction of the upper-story plane of the 8th-story corner terrace. The Project integrates well with the existing public spaces in the surrounding neighborhood, providing an office location with close proximity to the Canal Park system to the east along Second Street, as well as the Yards park along the waterfront further south of the Property.

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:*

The Project respects the historic character of the Navy Yard neighborhood. The proposed design establishes an engaging presence along M Street and contributes to the character of the intersection at M and First Streets. The Project will visually enhance the surrounding area and complement the existing commercial and residential development in the immediate vicinity.

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:*

The Project will include high quality materials, including accents to improve upon the existing building, and will strengthen the building's street presence and relationship to the pedestrian environment by highlighting the corner. The wood soffit and Y-shaped steel features at the ground level entrance and 8th story terrace will emphasize the corner and create visual interest along the pedestrian streetscape. The textural contrast between the timber and steel features and the artful expression of the wood soffits will help to elevate this portion of M Street.

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

The Project will be LEED certified and will include green roof features. This, along with the Applicant's other sustainable building features, will help ensure that the Project mitigates environmental impacts and furthers the city's sustainability goals.

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:*

The Project facilitates connectivity by increasing the stock of available office space one block west of a Metrorail station, as well as providing bicycle facilities and improving the pedestrian experience in the neighborhood by enhancing the existing façade. The proposed renovations will include the addition of a bicycle room on the P1 level, which will include 43 long term spaces, and expansion of the existing shower facilities on the ground floor, increasing the number of showers from two (2) per locker room to four (4) per locker room.

13. The Project demonstrates superior design and green features — including the use of mass timber construction — that are superior to typical matter-of-right development. Because of this, the Project satisfies the urban design criteria of Subtitle X § 604.7 in a way that is superior to any matter-of-right development possible on the Property.

“Great Weight” to the Written Report of the ANC

14. The Commission is required to give “great weight” to the issues and concerns of the affected ANC expressed in its written report (§ 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2). To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. 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).
15. ANC 6D, the “affected ANC” in this case, voted not to oppose the Application, noting that the ANC is mindful of concerns raised by the residents of the Velocity condominium building to the north. The Commission finds the ANC’s lack of opposition to be persuasive and, as discussed below, finds that the concerns of the Velocity building residents, to the extent that they are relevant to the design review standards, have been addressed.

“Great Weight” to the Recommendations of OP

16. The Commission is also required to give great weight to the recommendations of OP. (D.C. Official Code § 6-623.04 and Subtitle Z § 405.8)
17. The Commission gives OP’s recommendation to approve the application great weight, concurs with OP’s report, and finds that the Applicant has provided the additional information requested by OP in its report. Accordingly, the Commission has given the requisite great weight to OP’s report and recommendation.

Persons in Opposition

18. The Commission finds that the issues and questions raised by the residents of the Velocity condominium building, to the extent they are relevant to the applicable design review criteria, have been adequately addressed by the Applicant in its submissions and testimony. Most significantly, the Commission credits the shadow study submitted by the Applicant, which shows very little impact whatsoever to the light available the Velocity building resulting from the proposed addition during the majority of the year, with a relatively minor impact during the winter months. The Commission notes that there is no impact shown at any point in the year to the upper story units occupied by Mr. Cox and Mr. Jacobs. Although questions were raised at the hearing regarding the accuracy of the shadow study because the initial study (Ex. 9B) did not show the Velocity building’s partially below-grade level visible on the south facing façade along L Street, the Commission credits the

study, as updated to show this below-grade level (Ex. 19A), and concludes that this minor discrepancy does not undercut the otherwise accurate depiction in the studies of shadows cast by the existing building and proposed addition across the year.

19. With respect to the opposing neighbors' other issues, the Commission notes that construction impacts are not within the Commission's jurisdiction in considering a design review application. Further, some of the comments submitted raised questions regarding the need for asbestos removal and hazardous material abatement, and the Commission notes that, as the Applicant stated at the public hearing, the existing building, constructed in 2001, was built after the use of asbestos had been banned by the federal government in the 1980s. (Tr. at __.) Further, the Property is already developed with a commercial use and does not require any treatment for hazardous materials. With respect to the concerns regarding the loss of views from the Velocity building facing south, the Commission notes that there is no entitlement to a view across another's property in the District of Columbia. *See Hefazi v. Stiglitz*, 862 A. 2d 901, 911 (D.C. 2004); *Ash v. Tate*, 73 F.2d 518, 519 (D.C. Cir. 1934).

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for Design Review. This approval is subject to the following conditions, standards, and flexibility:

1. **Project Development.** The Project shall be built in accordance with the plans and elevations dated December 20, 2019, and marked as Exhibit 9A and supplemented by Exhibit 19A and 19B of the record (the "**Final Plans**"), and with the following design flexibility from the Final Plans:
 - a. Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the plans approved by the order;
 - b. Exterior Materials – Color: To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the order;
 - c. Exterior Details – Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the plans approved by the order. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
 - d. Parking Layout: To make refinements to the approved vehicular and bicycle parking configuration, including layout and number of parking space plus or minus

ten percent (10%), so long as the number of parking spaces is at least the minimum number of spaces required by the Zoning Regulations;

- e. Streetscape Design: To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
- f. Signage: To vary the final design of the signage for the Project, subject to full compliance with applicable signage restrictions under the D.C. Building Code and consistent with the indicated dimensions;

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

- a. Transportation Management Coordinators (TMC) will be designated for the planning, construction, and operations phases of the development. Contact information for the TMC will be provided to goDCgo. The TMC will receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan. The TMC will act as a liaison with DDOT, goDCgo, and Zoning Enforcement. The position may be part of other duties assigned to the individual.
- b. The TMC will develop, distribute, and market information regarding transportation options to tenants of the building and will promote transportation events, such as Bike to Work Day, National Walking Day, and Car Free Day.
- c. The TMC will notify goDCgo each time a new tenant moves into the building and will provide TDM information to each tenant when they move in.
- d. Following certificate of occupancy, the TMC will conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year. All employer tenants must survey their employees and report back to the Transportation Coordinator.
- e. The TMC will demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law by participating in at least one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future.
- f. The property management website will include information on and/or links to current transportation programs and services, such as:
 - Capital Bikeshare,
 - Car-sharing services,

- Ride-hailing services (e.g. Lyft or Uber),
 - Transportation Apps (e.g. Metro, Citymapper, Spotcycle, Transit),
 - goDCgo.com,
 - Commuter Connections Rideshare Program, which provides complimentary information on a variety of commuter programs to assist in determining which commuting options work best for commuters,
 - Commuter Connections Guaranteed Ride Home, which provides commuters who regularly (twice a week) carpool, vanpool, bike, walk or take transit to work with a free and reliable ride home in an emergency, and
 - Commuter Connections Pools Program, which incentivizes commuters who currently drive alone to carpool. Participants can earn money for carpooling to work and must complete surveys and log information about their experience.
- g The TMC will provide employees who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future.
- h Forty-three (43) long-term secure bicycle spaces will be provided on the P1 level of the garage. Six (6) additional short-term bicycle spaces (in addition to the six existing spaces) will be provided in public space on First Street.
- i A bicycle repair facility will be provided on the P1 level of the garage.
- j Shower and changing facilities will be provided in the building for employees who bike, walk, or jog to work. In accordance with ZR16, four showers and 25 lockers will be provided.
- k Two electric vehicle charging stations will be provided in the garage.
- l A minimum of two parking spaces located in convenient locations in the garage near the elevator lobby will be designated for carpools and/or vanpools.
- m The cost of parking spaces for tenants will be unbundled from leases.
- n A free SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride to each new employee.
- o Applicant will not lease unused parking spaces to anyone aside from tenants of the building (e.g., will not lease to other nearby office employees, single-family home

residents, or sporting events). Hourly and daily public parking is still permitted.

3. **Loading Management Plan Measures.** For the life of the Project, the Applicant shall adhere to the following LMP measures:
 - a. A loading dock manager will be designated by the building management who will be on duty during delivery hours. The dock manager will be responsible for coordinating with vendors and tenants to schedule deliveries and will work with the community and neighbors to resolve any conflicts should they arise.
 - b. A lease provision will require all tenants to use only the loading area for all deliveries and move-in and moveout activities.
 - c. All tenants will be required to schedule deliveries that utilize the loading area (any loading operation conducted using a truck 20-feet in length or larger).
 - d. The dock manager will schedule deliveries using the berths 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 not compromise safety or impede [drive aisle, street, alley, intersection] functionality.
 - e. The dock manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic along L Street except during those times when a truck is actively entering or exiting a loading berth.
 - f. Service vehicle/truck traffic interfacing with L Street traffic will be monitored during peak periods and management measures will be taken, if necessary, to reduce conflicts between truck and vehicular movements.
 - g. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight).
 - h. The dock manager will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading dock as well as notifying all drivers of any access or egress restrictions. The dock manager will also distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws. The dock manager will also post these materials and other relevant notices in a prominent location within the loading area.
4. This Application approval shall be valid for a period of two years from the effective date of this Order. Within such time, an application for building permit must be filed as specified in 11-Z DCMR § 702.2. Construction must begin within three years after the effective date

of this Order. (11-Z DCMR § 702.3.)

5. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On _____, upon the motion of _____, as seconded by _____, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting on January 27, 2020 by a vote of x-x-x ([Anthony J. Hood, Robert E. Miller, Peter Shapiro, and Peter G. May; Michael G. Turnbull not present, not voting]).

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