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VIA IZIS

Zoning Commission
of the District of Columbia
441 4th Street, NW - Suite 210
Washington, DC 20001

**Re: Applicant's Supplemental Prehearing Submission
Z.C. Case No. 20-14 - Design Review
5 M Street, SW (Square 649, Lots 43, 44, 45, and 48)**

Dear Members of the Zoning Commission:

On behalf of VNO South Capitol LLC and Three Lots in Square 649 LLC (together, the "Applicant"), we hereby submit this Supplemental Prehearing Submission in support of the above-referenced case for design review at 5 M Street, SW (Square 649, Lots 43, 44, 45, and 48) (the "Property").

The Zoning Commission opened the public hearing on October 1, 2020, which was continued to November 5, 2020, and subsequently postponed to November 12, 2020 (Ex. 49), in order to give the Applicant additional time to work with Advisory Neighborhood Commission ("ANC") 6D on revisions to the building design. As set forth herein, the Applicant substantially revised the project design, massing, and materiality in order to address the ANC's concerns while still meeting the stated objectives of the M and South Capitol Streets Sub-Area and the applicable design review standards for the sub-area and D zones generally.

In addition, the Zoning Commission expressed concern relating to the flexibility requested to approve both the Mixed-Use Scheme and Residential Scheme. In response, the Applicant has removed the Mixed-Use Scheme and is submitting only the Residential Scheme for review and consideration in this application, as discussed below.

Attached hereto as Exhibit A is a full set of revised architectural plans and elevations (the "Revised Architectural Drawings") that show the updated project design, and in many instances also provide a comparison to the prior design iterations. The Revised Architectural Drawings at Exhibit A are intended to replace and supersede the architectural drawings previously submitted to the case record.

I. Coordination and Work with ANC 6D

Since the October 1st hearing, the Applicant has continued to work closely with the ANC to review their issues and concerns and has made significant design revisions in an effort to address them. In addition to multiple telephone conferences and emails, the Applicant and its team presented at virtual meetings with the ANC commissioners on October 12th and October 19th and made a full presentation of the revised design at the ANC's special public meeting on October 27, 2020. Although the ANC ultimately voted to oppose the application, below is a summary of the significant updates that the Applicant has made to the project in response to specific feedback from the ANC.

A. Updates to Building Design Based on ANC Feedback

1. **Residential Use Only**: In order to address the ANC's concern with being unable to adequately evaluate a project with two proposed uses, the Applicant has committed to moving forward with the residential-only scheme and has eliminated its prior flexibility request to obtain approval of two schemes (i.e., one mixed-use scheme and one residential scheme). Accordingly, the Revised Architectural Drawings depict a residential-only building with ground floor retail.
2. **South Capitol and M Street Corner**: The ANC raised concerns with the height and massing of the project, particularly at the corner of South Capitol and M Streets, and suggested that the Applicant provide additional "tiering" and setbacks at the corner to create more porosity into the site and reduce the scale of the building. The ANC raised concerns with the projecting "interlocking volumes," outwardly-rotated windows, and weight of the design of the building along South Capitol Street. As more specifically described below, the ANC also asserted that the building appeared to have three distinct design components that were not adequately harmonized into a cohesive design.

The Applicant addressed the ANC's concerns in the revised building design in a number of ways that are specifically highlighted at the corner of M and South Capitol Streets. As shown on Sheet 39 of the Revised Architectural Drawings, the Applicant removed the cantilevered volume at the corner and pulled the interlocking volumes inward to create open spaces and terraces at this important gateway location. Along the M and South Capitol Street facades, the Applicant revised the windows so that they rotate inward instead of outward and added balconies to reduce the weight of the volume along both street frontages. Removing the cantilever, revising the windows, and adding balconies together have the effect of making the building appear to recede from the viewshed of pedestrians along South Capitol Street, which was a stated concern raised by the ANC. The Applicant also revised the "stacking" of the upper-level towers into two-story groupings (previously three-stories) which helps to further reduce the building's overall scale at the corner and along South Capitol and M Streets.

At the ground level, the Applicant created a setback at the retail corner to improve pedestrian movements in this location. This corner setback connects into the

previously-proposed three-foot setback on M Street, which has been extended up through the third floor as a result of the increased podium height described below.

On South Capitol Street specifically, the Applicant removed the “hyphen” portion of the façade and extended the grid treatment for the entirety of the South Capitol Street elevation. *See* Sheet 36 of the Revised Architectural Drawings. A revised design of the previously proposed “hyphen” is now located on L and Half Streets only and is provided in a lighter grey brick color. To add context and better define the building’s residential use, the Applicant added more balconies to the South Capitol Street frontage, which were previously only on the hyphen portion of the façade, and are now provided as the inwardly-rotated windows.

In an effort to create more continuity among the varying building expressions and to address the ANC’s specific request to increase brick throughout the project, the Applicant revised the materiality of the M and South Capitol Street facades by replacing the previously proposed concrete with the same light grey brick that is used on the L and Half Street facades. *See* Sheets 39 and 41 of the Revised Architectural Drawings.

Collectively, these design modifications, in addition to others described below, help to lighten the appearance of the building, reduce its scale, and better respond to the goals of the surrounding neighborhood. At the same time, the revised design maintains the Applicant’s original design intent, complies with the applicable design review and special exception standards, and meets the goals of the Comprehensive Plan, the Southwest Neighborhood Plan (“SW Plan”), and the D-5 zone to maintain high density development at the Property.

3. **M Street Setback at 110 feet:** In further response to the ANC’s request to create more tiering and setbacks, the Applicant extended the 110-foot setback on South Capitol Street so that it turns the corner and is also provided as a 10 foot setback along the entire M Street frontage until it reaches the pavilion. *See* Sheets 16 and 48 of the Revised Architectural Drawings. This setback matches the setback of the pavilion, which has been and continues to be setback 10 feet from the property line along M Street for its entire height above the podium. As described below, the Applicant also reduced the height of the pavilion to just under 80 feet to create further tiering into the neighborhood. Creating the M Street setback at 110 feet and lowering the pavilion height further reduces the overall massing and height of the building and adds consistency to the overall design.
4. **Brick Podium:** The ANC raised concerns regarding the appearance of the building as it relates to the lower-scale rowhomes in the surrounding neighborhood, and in particular the sanitary homes located across M Street to the south. The ANC also stated its concern with the building looking too large and “looming” on top of the podium below.

The project has always included a strong brick podium that mimics the height, scale, and materiality of the surrounding rowhomes. The podium also includes walk-up units on Half and L Streets to create traditional stoop-like typographies that match the design of surrounding rowhomes.

As shown on Sheet 48 of the Revised Architectural Drawings, the Applicant increased the height of the podium at the southern portion of the project from two- to three-stories to address the ANC's concern that the podium appeared too "squat" below the towers above. Increasing the podium's height provides greater sense of relief at the sidewalk and allowed the Applicant to reorganize the towers above into two-story groupings instead of three-story groupings, thus further reducing the building's apparent massing.

In order to create an overall consistency in project design and further highlight the podium's relation to the adjacent rowhomes, the Applicant established a reveal at the top of the podium that extends for the entirety of the L and Half Street frontages. *See* Sheet 40 of the Revised Architectural Drawings. The reveal also reflects the Southwest design aesthetic influence of creating "floating volumes" above the base building.

Finally, as stated above, the Applicant created new setbacks/cut-outs in the podium at the M and South Capitol Street retail corner to improve pedestrian movements and tie into the three-foot setback on M Street. *See* Sheets 23 and 47 of the Revised Architectural Drawings. This setback creates additional space for pedestrians and extends the openness of the corner down to the ground level.

5. **Pavilion**: The ANC raised concerns with the visual porosity of the project and the need to incorporate more light and air to the building design. Although the Applicant is required to provide a strong and continuous street frontage on South Capitol Street, the Applicant was able to significantly reduce the height and massing of the pavilion at the southwest corner of the Property. The prior design had a taller pavilion with a tiered treatment that provided connections between the two residential components of the building. Compared to the original design, the Applicant reduced the height of the pavilion by five stories, which included removing the tiered floors above the main volume. *See* Sheets 43-45 of the Revised Architectural Drawings.

Although the pavilion height was decreased, a rooftop connection is still provided at the top of the building via a bridge at the penthouse level. As noted below, the ANC requested details on the design and program for the pavilion's new roof, and in response the Applicant provided rooftop landscape plans showing that the pavilion roof will be programmed with landscaping and additional usable outdoor space for building residents. *See* Sheet 107 of the Revised Architectural Drawings. The pavilion continues to have a 10-foot setback from M Street above the podium, which matches the new 10-foot setback at 110 feet for the primary building's M Street façade.

6. **L and Half Street Facades**: As referenced above, the Applicant completely redesigned the Half and L Street facades to replace the concrete grid treatment with more traditional brick facades (similar to the old "hyphen" approach). In doing so, the

Applicant lightened the color of the brick, incorporated a horizontal interlocking brick pattern (previously metal panel) between stories, and increased the number of balconies on both facades. *See* Sheets 37, 38 and 42 of the Revised Architectural Drawings. The result is a consistent building treatment along the entirety of the Half and L Street facades, creating continuity and a more cohesive design approach. The revised design also takes more obvious cues from the more traditional Southwest design aesthetic and locates those elements on the portions of the building located closest to and facing Southwest. Finally, the Applicant added a three-story inset terrace at the southwest corner of the building above the pavilion facing L and Half Streets to interact with the lowered pavilion height and provide additional south-facing balconies.

At the northwest corner of the building, the Applicant removed the previously-proposed interlocking cantilevered expression but maintained setbacks at the top two levels which wrap the corner to the north, connecting with the vertical reveal above the residential entry on L Street. *See* Sheet 37 of the Revised Architectural Drawings. The pavilion's façade concept is applied at this vertical reveal, thus furthering the project's overall design cohesion. The upper level setback is also provided in this location to create relief closest to and facing the Southwest neighborhood.

Prior to the special public meeting, the Applicant also sent the ANC responses to specific questions raised by Commissioners during meetings with the Applicant as follows:

1. **Head-on Perspectives of Each Street Frontage**: As requested by the ANC, the Applicant prepared "head on" views of each street frontage, which were sent directly to each of the ANC commissioners.
2. **Building Height and Setbacks**: The Applicant confirmed that the modifications to the building design did not result in a change to the overall height of the building. The maximum permitted height of the building is 130 feet from the building height measuring point, plus a 20 foot penthouse which is setback in accordance with the Zoning Regulations. The building still maintains this maximum permitted height.

In the original proposal, the building frontage on South Capitol Street was setback 1:1 from 110 feet to 130 feet, and the penthouse was also setback 1:1 from the building face at 130 feet. To achieve more tiering as requested by ANC, the Applicant revised the building design to also include a setback on M Street, such that the building rises to 110 feet, then is setback 10 feet before rising to the maximum permitted height of 130 feet. The penthouse is then again setback 1:1 from that building face. A setback is also provided above 110 feet on the L Street façade. As noted above, the height of the pavilion has been reduced to just under 80 feet, and the pavilion maintains its 10 foot setback from M Street for its entire height above the podium.

3. **Number of Balconies**: The Applicant confirmed that the number of balconies on South Capitol Street increased in the revised design. The prior design had 18 balconies located only on the northern-most portion of the building's South Capitol Street frontage (i.e., the "hyphen"). The revised design now has 20 balconies on the South Capitol Street

frontage, which are comprised of inwardly-rotated windows. On the L and Half Street facades, the building now includes 67 balconies as compared to 44 balconies in the previous proposal.

4. **Pavilion Roof**: The Applicant confirmed that the roof of the pavilion will be programmed with usable outdoor space for building residents. Any mechanical equipment will be minimal and will meet all setback requirements. *See* Sheet 107 of the Revised Architectural Drawings.

5. **Building Extension Over Private Drive**: As shown on Sheets 35 and 78 of the Revised Architectural Drawings, the Applicant pulled the building eastward on L Street by approximately 22 feet so that it extends to the property line abutting Lot 47 and bridges over the north-south portion of the private drive. In response to specific concerns raised by the ANC, the Applicant confirmed that the extension over the private drive will have no adverse impact on the operation of the private driveway for this project or a future project on Lot 47. At the entrance on L Street, the building will have a minimum vertical clearance of 20 feet above the private driveway to the second-floor slab, taking into account the building structure and exterior soffits. The lowest clearance in any portion of the private driveway is 15 feet, which is greater than the 14-foot minimum clearance required for loading facilities under the Zoning Regulations. Furthermore, the maximum height and width of commercial vehicles allowed in the District under the current requirements is 8.5 feet in width and 13.5 feet in height. Therefore, there will be more than sufficient clearance for all potential trucks to access the private driveway.

As noted above, under the revised building design, the L Street façade extends to the eastern property line abutting Lot 47. There is no required setback from this property line, so the extension is fully compliant with the Zoning Regulations. The building extension will be supported by columns along the east property line, which have been adequately spaced to allow for full vehicular and loading ingress and egress across the private drive from Lot 47. Moreover, the east-facing party wall that now abuts Lot 47 has been articulated to provide visual interest in a similar manner as the north-facing party wall until future development at Lot 47 moves forward.

6. **Public Space Landscaping**: The Applicant provided landscape drawings showing the proposed streetscape on all street frontages surrounding the Property, which are shown on the following pages of the Revised Architectural Drawings (no change from prior design):
 - a. Streetscape plan and precedent images: Sheets 101 and 106
 - b. Renderings showing streetscape: Sheets 23, 60-65
 - c. Sections showing streetscape: Sheets 100, 102-105

7. **Courtyard and Rooftop Design**: The Applicant provided drawings showing the proposed courtyard and updated rooftop designs, which are shown on the following pages of the Revised Architectural Drawings:

- a. Courtyard plans: Sheet 108-110
- b. Rooftop: Sheets 111-113
- c. Pavilion Rooftop: Sheets 107

8. **Cohesive Building Design**: The Applicant identified a number of design strategies and features that it used to create a cohesive building design while still breaking down the large project site. Given the Property's large footprint, the Applicant sought to create varied street frontages that break up the massing but are united in color and materiality. The varying expressions break down the large site, reduce the project's overall scale, and respond to the immediately adjacent contexts in all four directions. The design of the building at M and South Capitol Streets incorporates a gridded masonry and glass expression, while the design at L and Half Streets is more traditional and incorporates elements from the Southwest vernacular. These two components are connected with the lower-scaled pavilion at the corner of M and Half Streets, which is comprised primarily of glass to increase the building's visual porosity.

The varying design components are further united through the use of brick at the podium level that wraps the entire building. The Applicant also replaced the concrete material previously proposed for South Capitol and M Streets with brick to further increase the building's cohesive design approach. As shown on the Revised Architectural Drawings, all four street frontages are now comprised of a brick masonry material.

9. **Use of Retail and Amenity Spaces**: The Applicant confirmed that approximately 24,000 square feet of retail will be located on the ground floor, primarily at the corner of South Capitol and M Streets and M and Half Streets. While the Applicant does not know the exact retailers that will occupy the spaces, the space has been designed to be flexible to accommodate a variety of different types of retail uses, including the potential for a grocer use.

Residential amenity spaces are also provided on the ground floor, second floor, and in the penthouses. The Applicant anticipates that these amenity spaces will include co-working spaces, a fitness center, and club room(s).

10. **Development on Lot 47**: The Applicant confirmed that the white structure shown in the renderings is the outline of a future building that could be developed on Lot 47. The outline shows the massing of how matter-of-right development of Lot 47 would fit into the corner parcel. The project includes articulated party walls where the building will eventually abut Lot 47.

11. **Signage**: The Applicant provided detailed signage plans, which are shown on the following pages of the Revised Architectural Drawings:
- a. Building elevations showing location and extent of signage: Sheets 116-120
 - b. Detailed storefront elevations: Sheets 81, 87, 121
 - c. Precedent signage images: Sheets 122-123
 - d. Building renderings depicting signage: Sheets 23, 60-62 and 64-65

In addition, the Applicant confirmed that the project will not include any digital signs. To memorialize this commitment, the Applicant has offered to include the following condition as part of the final order approving the application:

For the life of the Project, the Applicant shall install building signage that is consistent with the signage shown on the Approved Plans and shall prohibit digital signage or signage using neon lighting on the exterior of the Project

12. **Lighting:** The Applicant previously submitted lighting plans at Exhibit 32A. The lighting plans included with the Revised Architectural Drawings at Sheets 128-134 have the same design intent but have been updated to reflect the revised building design. The lighting plans show the types and locations of lighting proposed for the project as well as precedent images. The Applicant does not propose any neon or architectural lighting for the project; instead, the lighting will be functional and operational only, with the primary goal being for pedestrian safety and code compliance. The lighting will include low path lighting for egress, recessed downlights and wall sconces, and overhead downlights, and it will not include architectural lighting. As requested by the ANC, a nighttime rendering showing the building lighting is included at Sheet 61 of the Revised Architectural Drawings.

To memorialize the Applicant's lighting commitments, the Applicant confirmed that no architectural or neon lighting will be incorporated into the project and has offered to include the following condition as part of the final order approving the application:
For the life of the Project, the Applicant shall install building lighting that is consistent with the lighting shown on the Approved Plans and the Lighting Diagrams (Ex. 32A) and shall prohibit neon lighting on the exterior of the Project.

B. Non-Design Related Updates Based on ANC Feedback

1. **Heritage Tree:** As previously noted in the case record, a heritage tree is located in public space adjacent to the Property on Half Street. Thus, plans for the tree, including the final public space design and improvements and strategies to save the tree, are subject to review and approval by DDOT. The Applicant is working closely with DDOT to determine the best way to maintain and save the tree and is presently in the process of creating a preservation plan, performing a root study, and evaluating various design elements in public space that could potentially accommodate the tree. The Applicant will continue to provide updates to ANC 6D as future plans for the heritage tree move forward.
2. **Residential Parking Permit ("RPP") Restriction:** In response to concerns raised by the ANC regarding the project's impact on on-street parking, the Applicant has agreed to include the following condition as part of the final order approving the application:
"For the life of the Project, the Applicant shall not apply for Residential Parking Permit ("RPP") eligibility for the Property and shall include a rider in all residential leases, to be initialed by the residential tenant, that restricts all residential tenants of the Project from obtaining an RPP while under the terms of their lease."

II. Legal Standard for Design Review

As set forth below, the revised project design is in full compliance with the legal standards for design review applicable to the Property.

A. M and South Capitol Street Design Review Standards

The Property is subject to design review by the Zoning Commission under the M and South Capitol Streets Sub-Area pursuant to 11-I DCMR Chapter 6. Pursuant to 11-I DCMR § 616.6, the objectives of the M and South Capitol Streets Sub-Area are to ensure the preservation of the 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.

The only design-related standards for the M and South Capitol Streets Sub-Area that are applicable to the Property are those listed in 11-I DCMR § 616.7(d), (e) and (g), which require the following:

- (d) Any portion of a building that exceeds one hundred ten feet (110 ft.) in height shall provide an additional one-to-one (1:1) setback from the building line along South Capitol Street;
- (e) There shall be no openings in building frontages adjacent to South Capitol Street that provide entrances or exits for vehicular parking or loading; and
- (g) A minimum of sixty percent (60%) of the street-wall on the west side of South Capitol Street shall be constructed on the setback line.

As previously demonstrated in the Applicant's Prehearing Statement (Ex. 14, pp. 19-21), the proposed Project complies with all three of the applicable setback requirements and with the overall objectives of the M and South Capitol Streets Sub-Area. The revised design continues to comply with these standards as follows:

- (d) The project provides a 1:1 setback at 110 feet from the building line along South Capitol Street;
- (e) There are no openings adjacent to South Capitol Street that provide entrances or exits for parking and loading. All parking and loading access is provided on L and Half Streets; and
- (g) A minimum of 83% of the streetwall is constructed on the setback line, which for the Property is the eastern property line along South Capitol Street pursuant to 11-I DCMR § 616.7(a). *See* Sheet 80 of the Revised Architectural Drawings.

B. Subtitle I Design Review Standards

In addition, the project is subject to the general design review requirements for D Zones set forth in 11-I DCMR Chapter 7. The standards applicable to the Property are listed in 11-I DCMR § 701.2(a), which provides that "an applicant requesting approval under this section shall

prove that the proposed building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation will:

1. Help achieve the objectives of the sub-area, as set forth in Subtitle I, Chapter 6, in which it is located;
2. Be in context with the surrounding neighborhood and street patterns;
3. Minimize conflict between vehicles and pedestrians;
4. Minimize unarticulated blank walls adjacent to public spaces through facade articulation; and
5. Minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards.

As previously demonstrated in the Applicant's Prehearing Statement (Ex. 14, pp. 21-24), the proposed Project complies with the above-referenced design standards. The revised design continues to comply with these standards as follows:

1. The project helps to achieve the objectives of the M and South Capitol Street sub-area by providing a strong streetwall and setbacks at 110 feet along South Capitol Street to preserve the important view of the Capitol Dome. The project will also advance South Capitol Street as a vibrant, high-density, and mixed-use corridor through the addition of new ground floor retail that will improve the vibrancy of the street. Large storefront windows will be provided at the ground level, and the adjacent streetscape will be improved with new paving, street trees, understory plantings, and pedestrian-scaled features including new lighting, benches, bicycle racks, and trash and recycling receptacles. Collectively, the building's high quality materials, strong podium, large window openings, active retail base, and significant streetscape improvements will encourage activity, improve safety, and enhance the pedestrian experience along South Capitol Street.
2. The project is in context with the surrounding neighborhood and street patterns. The project offers distinct façade designs at each elevation, provides active ground floor retail and amenity spaces, and consolidates parking and loading internally with access from L and Half Streets to minimize impacts on existing streets and uses. This configuration will maximize active street frontage along South Capitol Street and significantly improve the public realm. In addition, the building responds to the many different contexts and design aesthetics in which the Property is located. The base of the building is scaled to complement the rowhomes to the south through its two- to three-story mass and direct walk-up units. The L and Half Street facades imitate historic Southwest architecture with a gridded brick pattern between stories and traditional residential balconies, while the M and South Capitol Street facades are comprised of a more modernist grid that reflects more recent design aesthetics in the Southwest neighborhood.
3. The project minimizes vehicular and pedestrian conflicts since all parking and loading access into the Property will be provided on L and Half Streets, rather than from M or South Capitol Streets. All vehicular pick-up and drop-off activities will occur within a

designated area in the private drive, thus further minimizing potential conflicts between vehicles and pedestrians. In addition, the loading facilities can accommodate front-in and front-out truck movements. Thus, the design of the parking and loading facilities and the proposed circulation pattern will provide for the maximum amount of uninterrupted sidewalks, landscaping, and public spaces, and will ensure the greatest amount of pedestrian safety.

4. As shown on the Revised Architectural Drawings, the building has been designed to minimize unarticulated blank walls adjacent to public spaces through facade articulation on all street-facing elevations. The ground floor levels include active uses with clear inviting windows and extensive architectural expression. High-quality materials are used throughout, including brick, metal, wood composite, and glazing. Significant setbacks and outdoor courts and terraces are also provided to increase visual interest and enhance the overall aesthetic of the building within its context. The party walls that abut Lot 47 have also been articulated to provide visual interest until that property is developed.
5. The project has been designed to minimize its impact on the environment. The project will meet the standards of LEED Silver under LEED v4 for Building Design and Construction and will incorporate various sustainable features, including solar panels.

C. Special Exception Relief

Finally, pursuant to 11-I DCMR § 701.2(a), new buildings or structures on a designated street segment within the M and South Capitol Streets Sub-Area must meet the special exception standards set forth in 11-X DCMR Chapter 9. Accordingly, pursuant to 11-X DCMR § 901.2, the Commission must find 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. As previously demonstrated in the Applicant's Prehearing Statement (Ex. 14, pp. 24-25), the proposed Project complies with the special exception standards of review. The revised design continues to comply with these standards as set forth in the following paragraph.

The project meets all of the dimensional and use requirements for a site within the M and South Capitol Streets Sub-Area and complies with all of the development and use standards for the D-5 zone. As described above, the project is also fully consistent with the goals of the Sub-Area to preserve the axial view of the Capitol Dome and further the development of South Capitol as a vibrant, high-density and mixed-use corridor. The project will not tend to affect adversely the use of neighboring property, as the majority of developed properties in the immediate area along South Capitol Street are improved with 110 to 130-foot tall, high-density mixed-use buildings and future development sites are zoned for similar heights and density. As such, the proposed height and density of the project is consistent with the surrounding massing and neighborhood character. The proposed residential use is consistent with uses in the surrounding area, and the proposed ground floor retail will help to create South Capitol Street as a vibrant, walkable, and pedestrian-friendly urban boulevard as called for in planning goals. Furthermore, the proposal to create centralized access for vehicles and loading – along with the commitment to provide access for and work with the owner of Lot 47 – will minimize any potential conflicts between pedestrians and vehicles. Therefore, the project is fully consistent with existing development patterns and will not

affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map.

As stated above, new development at the Subject Property is required to meet the special exception standards of 11-X DCMR § 901.2. The Board of Zoning Adjustment (“BZA”) – and in this case, the Zoning Commission – is authorized to grant special exceptions where, in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the regulations. *See French v. Board of Zoning Adjustment*, 658 A.2d 1023, 1032 (1995). “Special exceptions, unlike variances, are expressly provided for in the Zoning Regulations. The Board’s discretion to grant special exceptions is limited to a determination whether the exception sought meets the requirements of the regulation. The burden of showing that the proposal meets the prerequisite enumerated in the particular regulation pursuant to which the exception is sought rests with the applicant. In sum, the applicant must make the requisite showing, and once he has, the Board ordinarily must grant his application.” *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C.1973) (emphasis added); *see also French*, 658 A.2d at 1033, stating that the “applicant has the burden of showing that the proposal complies with the regulation but once that showing has been made, ‘the Board ordinarily must grant [the] application.’” *See also Robey v. Schwab*, 307 F.2d 198, 201; *Hyman v. Coe*, 146 F. Supp. 24, 27, 32 (D.D.C.1956); *First Baptist Church v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695, 698 (D.C.1981).

Accordingly, based on the information described herein and the materials previously submitted to the case record, including the reports of the Office of Planning and DDOT, it is clear that the proposed project is 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. That being the case, the Commission “ordinarily must grant the application.”

D. Inapplicability of Subtitle X

As detailed above, the application is subject to: (i) the M and South Capitol Streets Sub-Area design review standards in 11-I DCMR § 616; (ii) the general design review standards for D zones in 11-I DCMR, Chapter 7; and (iii) the special exception criteria of 11-X DCMR § 901.2.

In addition to those standards, with which the Applicant has demonstrated the project complies, 11-X DCMR, Chapter 6 establishes the purposes, applicability, and standards for design review cases generally, which includes an evaluation of how the proposed development is not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site. However, projects that are subject to design review due to their location with frontage on a designated street segment identified in Subtitle I are specifically exempted from the standards of Subtitle X, Chapter 6. *See* 11-X DCMR § 601.1 stating that “[e]xcept for Subtitle I, this chapter applies to any instance when the Zoning Regulations require Zoning Commission review of any building, structure, or use other than a campus plan. Such a review shall hereinafter be referred to as a ‘Non-Voluntary Design Review’” (emphasis added).¹ Therefore, as the Applicant has previously stated, the subject application is not required to provide

¹ The Zoning Commission recently approved two design review cases within the M and South Capitol Streets SubArea and in doing so did not evaluate the standards of 11-X DCMR § 601. See Z.C. Order Nos. 19-23 and 17-25.

an analysis of the project's compliance with 11-X DCMR, Chapter 6 or its consistency with the Comprehensive Plan or other applicable plans.

Despite the foregoing, the Applicant previously submitted an analysis demonstrating how the project is fully compliant with the standards of 11-X DCMR, Chapter 6. This analysis included a detailed description of how the project is not inconsistent with the Comprehensive Plan or the Southwest Neighborhood Plan ("SW Plan"), which is the Small Area Plan applicable to the Property. *See* Exhibits 14C and 14D. As explained in those materials, the Property's D-5 zoning is fully consistent with the Future Land Use Map, which designates the Property as High Density Commercial, and is also consistent with the SW Plan, which also designates the Property for High Density Commercial use. The project is also consistent with the specific design guidelines established in the SW Plan, as shown on the Revised Architectural Drawings, Sheets 15-24 and as detailed in Exhibit B attached hereto.

IV. Affordable Housing

Pursuant to Subtitle I, Section 539.2, residential density in the D-5 zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10. However, the use of penthouse habitable space devoted to residential units does generate a requirement pursuant to 11-C DCMR §§ 1001.2(a)(3) and 1500.11. The Applicant is permitted to make a contribution to the Housing Production Trust Fund to satisfy its requirement resulting from the penthouse habitable space. However, given the community's desire for affordable housing within the project, the Applicant will provide one IZ unit on-site at 50% of the Median Family Income ("MFI") to satisfy the penthouse habitable space requirement pursuant to 11-C DCMR §§ 1500.11 and 11-C DCMR Chapter 10.

Prior to the October 1, 2020 public hearing, the Applicant had committed to the community that it would provide an additional seven affordable housing units outside of the required IZ unit, for a total of eight units, as a result of the Applicant's work with the community and concerns that had been raised. Since that time, the Applicant has increased this commitment and has now proposes to provide an additional 19 affordable housing units at 80% of the MFI, in addition to the one required IZ unit at 50% of the MFI. The 19 affordable units are being offered as a result of the Applicant's work with the ANC and are not required as part of IZ pursuant to Subtitle C, Chapter 10 or the Design Review process. **Thus, the total number of affordable housing units proposed for this project has increased from eight total units to 20 total units for a project that is otherwise exempt from IZ.**

The Commission has consistently found that the only basis for evaluating a design review case is whether it meets the standards of the applicable design review. *See, e.g.* Z.C. Case No. 16-06, in which the Commission found that the application must be decided based on the applicable design review standards and that it should not give direction as to affordable housing or other "proffer-like" amenities. Specifically Z.C. Order No. 16-06 states that the "Commission's authority in this case is limited to whether the Applicant has met the design review, variance, and special exception tests required by the Zoning Regulations, and any conditions of approval should be intended to mitigate identified adverse effects related to that review. Because these requests [i.e., for affordable housing] go beyond the scope of the Commission's review of this application,

the Commission declines to include them as conditions of this Order.” See Conclusion of Law No. 8.

In the present application, IZ is not required for the project other than the IZ generated by the penthouse habitable space due to the Property’s D-5 zoning. As described above, the Commission has not historically required applicants to provide affordable housing in design review cases when it is not otherwise required. See, e.g. Z.C. Order No. 16-06 and Z.C. Order No. 17-25. The Commission has similarly not required applicants to provide more affordable housing in design review cases than would otherwise be required in the underlying zone. See, e.g. Z.C. Order No. 17-05.

Therefore, based on the consistent precedent from this Commission and the Zoning Regulations in effect, the 19 additional affordable housing units are outside the scope of the design review process and should not be made conditions to approval of the application for design review. However, the Applicant will continue to work with the ANC to ensure that the additional affordable housing units are provided for the benefit of the community.

V. Supplemental Transportation Memorandum

As set forth in the Supplemental Transportation Memorandum (the “Transportation Memo”) dated October 30, 2020, and attached hereto as Exhibit C, the Applicant provided an update to DDOT on how the revised development program impacts the transportation aspects of the project.

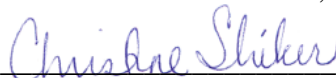
VI. Additional Expert Witness

Attached hereto as Exhibit D is the resume of Shane Dettman whom the Applicant will proffer as an expert witness in zoning and land use planning at the November 12, 2020 public hearing. An outline of Mr. Dettman’s testimony is also included at Exhibit D.

The Applicant appreciates the Commission’s continued review of this application.

Sincerely,

HOLLAND & KNIGHT, LLP



Christine M. Shiker.



Jessica R. Bloomfield

Attachments

cc: Certificate of Service
Joel Lawson, Office of Planning (via email, with attachments)
Steve Cochran, Office of Planning (via email, with attachments)
Anna Chamberlin, District Department of Transportation (via email, with attachments)
Aaron Zimmerman, District Department of Transportation (via email, with attachments)
Gail Fast, ANC 6D Chair (via email at 6d01@anc.dc.gov, with attachments)
Anna Forgie, Committee on 6D02 Affairs (via email at forgie6d02@gmail.com, with attachments)

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2020, a copy of the foregoing Supplemental Prehearing Submission was served on the following by email:

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Via Email

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Via Email



Jessica R. Bloomfield