

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**Z.C. ORDER NO. 20-14**  
**Z.C. Case No. 20-14**

**VNO South Capitol LLC and Three Lots in Square 649 LLC**  
**(Square 649, Lots 43, 44, 45, and 48 [5 M Street, SW])**

**DATE**

At its properly noticed public meeting on January 14, 2021, the Zoning Commission for the District of Columbia (the “Commission”) considered the application of VNO South Capitol LLC and Three Lots in Square 649 LLC (together, the “Applicant”) for a mandatory Design Review of a mixed-use development (the “Project”) located at 5 M Street, SW (Square 649, Lots 43, 44, 45, and 48) (the “Property”) in the D-5 zone and in the M and South Capitol Streets Sub-Area (the “Application”). The Applicant requested Design Review pursuant to Subtitle I §§ 616.8 and 701 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 April 8, 2020, 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. (Exhibit [“Ex.”] 3F.)
2. On July 7, 2020, the Office of Zoning (“OZ”) sent notice of an October 1, 2020, virtual public hearing to:
  - The Applicant;
  - ANC 6D;
  - ANC Single Member District (“SMD”) 6D02;
  - The Office of ANCs;
  - The Office of Planning (“OP”);
  - The District Department of Transportation (“DDOT”);
  - The District of Columbia Housing Authority (“DCHA”);
  - The Department of Energy and Environment (“DOEE”);
  - The Office of the Attorney General;
  - The Ward 6 Councilmember, Chair of the Council, and the At-Large Councilmembers; and
  - The owners of property located within 200 feet of the Property. (Ex. 5, 6.)

3. On July 16, 2020, the Office of Zoning sent notice of the October 1, 2020, virtual public hearing to all existing lessees on the Property. (Ex. 8.)
4. Pursuant to Subtitle Z § 402, on July 17, 2020, the notice of the October 1, 2020, public hearing was published in the *D.C. Register*. (Ex. 4.)

#### Parties

5. The parties to the case other than the Applicant were ANC 6D and 1101 South Capitol, LLC (the “Lot 47 Owner”), the owner of Lot 47 which abuts the Property and is the only lot other than the Property within Square 649.
6. The Lot 47 Owner requested party status on November 3, 2020, which the Commission granted at the continued public hearing held on November 12, 2020. (Ex. 53, 53A, 53B.)

#### The Property

7. The Property is located within Square 649, which is bounded by L Street, SW to the north, South Capitol Street to the east, M Street, SW to the south, and Half Street, SW to the west. The Property is presently improved with a single story retail structure on Lot 48 occupied by a 7-11 convenience store and is otherwise used as surface parking. The Property includes a total of approximately 75,656 square feet of land area and comprises approximately 75% of Square 649.
8. The Property is located in the D-5 zone district and within the M and South Capitol Streets Sub-Area. The purpose of the D-5 zone is to promote high-density development of commercial and mixed uses. Subtitle I § 538.1. 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. Subtitle I § 616.1.
9. The Generalized Policy Map (“GPM”) of the Comprehensive Plan (Title 10A of the DCMR, the “CP”) designates the Property as a Neighborhood Enhancement Area. Neighborhood Enhancement Areas are neighborhoods with substantial amounts of vacant and underutilized land. *See* Framework Element, effective as of August 27, 2020 (the “Framework Element”) § 225.6. The guiding philosophy in Neighborhood Enhancement Areas is to ensure that new development responds to the existing character, natural features, and existing/planned infrastructure capacity. New housing should be encouraged to improve the neighborhood and must be consistent with the land-use designation on the Future Land Use Map and with Comprehensive Plan policies. Framework Element § 225.7.
10. The CP’s Future Land Use Map (“FLUM”) designates the Property as High Density Commercial, which is used to define the central employment district, other major office centers, and other commercial areas with the greatest scale and intensity of use in the District. Office and mixed office/retail buildings with densities greater than a FAR of 6.0 are the predominant use, although high-rise residential and many lower scale buildings (including historic buildings) are interspersed. Framework Element § 227.13.

## The Surrounding Neighborhood

11. The Property is located between the Navy Yard and Southwest Waterfront neighborhoods of the District, approximately one block to the north Nationals Park and farther to the north of Buzzards Point. It is approximately three blocks to the west of the Navy Yard Metrorail station and four blocks to the east of the Waterfront Station Metrorail station. The Property is approximately three blocks south of the Southeast Freeway.
12. The surrounding neighborhood is improved with a variety of high-density mixed use residential towers, office buildings, and hotels. Lot 47, the only other lot in Square 649, is located at the northeast corner of the Square with frontage on South Capitol and L Streets. Lot 47 is currently vacant but is permitted to be developed with a building having the same height and density as the Property.
13. The block immediately to the north of the Property (Square 648), which is also vacant, fronts on South Capitol Street and is permitted to be developed with buildings having the same height and density as the Property. The lots located along South Capitol Street to the immediate south of the Property are permitted to be developed with buildings having a height of 110 feet. Immediately across from Nationals Park is the Camden South Apartments and a large site that is currently in development planning for a residential building. Lower-density, two-story residential uses are located to the south and southwest of the Property, south of M Street.

## The Project

14. The Applicant proposes to develop the Property as a multi-family residential building with ground floor retail along M and South Capitol Streets. The Project will include approximately 682,351 square feet of gross floor area (“GFA”) (approximately 9.0 floor area ratio (“FAR”)), comprised of approximately 615 residential units, approximately 659,325 square feet of GFA devoted to residential use, and approximately 23,026 square feet of GFA devoted to retail use. The maximum building height will be 130 feet, with upper-level setbacks at 110 feet. The Project will include penthouse habitable and mechanical space at a maximum height of 20 feet, with the habitable space including residential units.
15. The Project will be divided into “Phase A” on the southern portion of the Property and “Phase B” on the northern portion of the Property. Phase A will include the southern residential tower that includes ground floor retail at the corner of M and South Capitol Streets (the “South Tower”) and the “Pavilion” located on the southwest corner of the Property, which also contains residential units and serves as the connection between the two Phases. Phase B will be the northern residential tower with walk-up residential units on the ground floor along Half Street and the primary residential pedestrian entrance on L Street (the “North Tower”). The two towers will be connected via a meaningful connection through the Pavilion and will be a single building for zoning purposes.
16. Pursuant to the Commission’s authority in Subtitle Z § 702.4, the Applicant requested flexibility to phase the construction of the project, with Phase A being constructed first and

Phase B following, with a building permit application being submitted within two years following issuance of the first certificate of occupancy for Phase A. The Applicant will have the option to follow this phasing plan or to construct Phase A and Phase B simultaneously.

### Project Design

17. The final design of the Project is a result of significant and extensive revisions following submission of the original Application package, which were based largely on feedback from the Commission at the public hearing and from the ANC at the public hearing and in numerous meetings prior to and following the hearing. The final design of the Project has been designed to respect the priorities and stated concerns of the ANC while still meeting the goals of the Zoning Regulations and applicable planning documents.
18. The Project meets the applicable design-related standards for the M and South Capitol Streets Sub-Area set forth in Subtitle I § 616.7 by providing a 1:1 setback at 110 feet along South Capitol Street, providing no openings in the building frontage adjacent to South Capitol Street, and constructing greater than 60% of the building's streetwall on South Capitol Street on the property line. *See, e.g.* Applicant's filings at Ex. 3, 14, and 61 and reports of OP at Ex. 17 and 55.
19. The Project also meets the applicable design review standards for D Zones set forth in Subtitle I § 701.2(a) because the Project achieves the objectives of the Sub-Area, is in context with the surrounding neighborhood and street patterns, minimizes conflicts between vehicles and pedestrians, minimizes unarticulated blank walls, and minimizes its impact on the environment. *See, e.g.* Applicant's filings at Ex. 3, 14, and 61 and reports of OP at Ex. 17 and 55. To this end, and as described below, the Commission finds that the architectural design for the Project draws from influences in the Southwest neighborhood, reflects the monumental importance of the South Capitol Street boulevard, establishes a vibrant ground floor pedestrian experience, and serves as an important gateway into the Southwest neighborhood at its prominent location.
20. The South Tower of the Project is located at the important gateway corner of M and South Capitol Streets. The South Tower includes retail at the ground floor with large storefront windows and entrances, and residential units above. The base of the building is comprised of a two-and three-story brick podium that provides a similar scale to the lower density neighborhood to the south and west. At the southeast corner, the interior volume is removed at the ground level to create a re-entrant entry corner, and the podium is pulled back from the property line by three feet along the full frontage of M Street, thus enhancing the pedestrian experience and creating additional space for green areas on the perimeter of the Property.
21. The upper levels of the South Tower are comprised of large exposed concrete bays that are two floors tall by one structural bay wide, and which are interspersed with traditional inset balconies. The clear grid lines accommodate the 1:1 setback at 110 feet along South Capitol Street, which wraps the corner onto M Street thus providing relief in massing towards the neighborhood. The corner element of the South Tower has been eroded by replacing

interior volumes with large terraces and balconies. This exposed corner condition creates additional outdoor space for building residents, helps to increase light and air through the Property, and creates an important gateway entrance into the Southwest neighborhood, all while respecting the urban condition along South Capitol Street and framing the monumental views towards the Capitol. To further highlight this condition, all exposed soffits are clad in wood to provide warmth and contrast to the cool concrete. The inset bays at the corner set up a pattern of numerous inset balconies across the south and east facades with a consistent inset condition at 110 feet that creates an inherent cornice at the “top” of building to lower the perceived massing of the Project overall. Inset terraces are located at the top floors facing the pavilion to create an additional tiering effect as the Project moves into the Southwest neighborhood.

22. The North Tower is positioned along L and Half Streets and is comprised entirely of residential use. The primary residential entrance to the building is located mid-block on L Street, and traditional “stoops” with walk-up steps to individual ground floor units are also provided on L and Half Streets. A setback is provided at the ground level to expand the public space and add more greenery into the Project. The masonry podium used in the South Tower extends to North Tower to establish consistency and uniformity between the two Project components. Above the podium is a continuous third floor setback clad in glass with walk-out terraces, which helps to further distinguish the low-rise nature of the podium from the tower above and provide massing relief at the sidewalk.
23. The upper levels of the North Tower are comprised of large windows wrapped in brick masonry with a decorative brickwork spandrel treatment. Traditional hanging balconies are provided on both street frontages, which are consistent with traditional balcony design found in buildings throughout the Southwest. Similar to the South Tower, the top of the North Tower is visually lowered to the 11<sup>th</sup> floor with a continuous setback around the north, west, and southern end of the tower. To distinguish this portion, the upper two floors are wrapped in a glass grid that lightens the appearance of the building with the same façade type used on the pavilion. Facing the pavilion are inset terraces at the top floors to mimic those found in the South Tower also facing the pavilion.
24. Connecting the North and South Towers is the pavilion itself, which is located at the southwest corner of the Property. The pavilion contains residential amenity space or retail use on the ground floor and residential units above. Comprised of metal and glass, the pavilion is approximately half the height of the adjacent towers, thus creating significant tiering into the neighborhood along M Street. At the southwest corner, the pavilion includes inset terraces that match the inset terraces of the North and South Towers that face the pavilion. The lower volume of the pavilion is setback three feet to align with the South Tower’s podium setback, while the upper volume of the pavilion is setback ten feet from M Street to align with the South Tower’s upper floor setback. The combination of setbacks at the towers and the lowered pavilion height create a varied roof silhouette and establish a tiering effect into the neighborhood to fully respect the various frontages and adjacencies of the Property.
25. A large central courtyard is provided at the second level of the building. The courtyard will serve as an outdoor amenity space for residents of the Project and has been designed to be

functional as well as sustainable in terms of stormwater management. Connected to the main residential lobby on L Street, the courtyard creates a visual draw into the Property with a variety of design elements that include seating and gathering areas, an amphitheater, outdoor dining space, terraces and lawn areas, private terraces for residential units, visual green areas and bioretention areas, and opportunities for a water feature and/or art walls.

#### Parking, Loading, Circulation and Access

26. The Project includes a centralized, two-way private driveway system to provide access to below-grade parking, internal loading, and internal passenger drop off areas. The Project's below-grade parking garage will include approximately 299 vehicle parking spaces that will be accessed from the private drive. Loading is also accessed via the private drive and has been designed to accommodate head-in and heads-out truck access. The loading facilities include four 30-foot loading berths and one 20-foot service/delivery space. Long- and short-term bicycle parking will be provided in the amounts and in locations consistent with the Zoning Regulations. Interior bicycle storage will be located in the first garage level with access via the garage ramp and shuttle elevators; short-term exterior bicycle parking will be located at all street frontages. Two-way traffic for pedestrian pick-up and drop-off will be provided internal to the Property within the east-west portion of the private drive.
27. The primary residential entrances to the Project will be located on M and L Streets, with retail entries on M and South Capitol Streets. Additional secondary entry points will be located on Half and L Streets, including direct walk-ups to residential units on Half Street.

#### Streetscape, Landscaping, and Environmental Features

28. The streetscape surrounding the Property will include DDOT-standard scored concrete with special paving at the lobby entrances. Permeable paving will be used, interspersed with understory plantings and canopy trees, in order to reduce storm water runoff. A variety of pedestrian-scaled streetscape features will be installed, including new lighting, benches, bicycle racks, and trash and recycling receptacles. An existing bus stop will be relocated from mid-block on M Street to the corner of M and Half Streets. The Project includes a three-foot setback of the ground level façade on M Street to provide additional pedestrian space along the important corridor, a greater opportunity for outdoor activation, and the ability to incorporate additional plantings and greenery in the tree zone.
29. The Project incorporates important environmental features. Extensive and intensive green roof areas will be located in the courtyard, on the roofs of the North and South Towers, on the roof of the pavilion, and on the penthouse roofs. The green roofs will be at least eight inches deep to offer higher stormwater retention and opportunities to create a diverse planting palette. Native and adaptive species will be used to foster biodiversity and create a microhabitat. Small and medium trees and large shrubs will be planted in the courtyard and on the roofs. Roof pavers with high solar reflectivity, in addition to green roof cover, will be used to considerably reduce the heat island effect.

30. Additional sustainable elements will also be incorporated, including a water source heat pump, high performance windows, central ventilation with energy recovery and pressurization systems, and electric vehicle charging in the garage. The Project will also include a minimum of 1,000 square feet of solar panels located on the south facing penthouse walls. The Project has been designed to achieve LEED Silver under LEED v4 for Building Design and Construction.

### Design Flexibility

31. The Applicant requested the following minor flexibility as it relates to the design of the Project: (*see* Ex. 61.)

- a. Uses in the Pavilion: To provide retail and/or residential amenity uses in the flexible space located on the first level of the pavilion at the corner of M and Half Streets comprising approximately 6,317 square feet;
- b. 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;
- c. 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;
- d. 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;
- e. To locate retail entrances in accordance with the needs of retail tenants and to vary the facades as necessary;
- f. To vary the types of uses designated as retail use to include the following use categories (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)); (v) Medical Care (11-B DCMR § 200.2(p)); and (vi) Arts, Design, and Creation (11-B DCMR § 200.2(e));
- g. Exterior Courtyards and Rooftop: To vary the configuration and layout of the exterior courtyards and rooftops, including the location and size of the rooftop pool, so long as the courtyards and rooftops continue to function in the manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained;
- h. Number of Units: To provide a range in the approved number of residential dwelling units of plus or minus ten percent (10%), provided that to the extent that

additional three-bedroom units are incorporated, to reduce the number of units by up to fifteen percent (15%);

- i. Parking Layout: To make refinements to the approved parking configuration, including layout and number of parking spaces of 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;
- j. Internal Circulation and Loading: To make refinements to the private drive internal to the Project, including but not limited to the final dimensions and column spacing, so long as the clear dimension within the private driveway is not less than 22 feet along the shared property line at Lot 47 and 20 feet within the private driveway, to accommodate vehicular access to Lot 47 as the design of that project proceeds, and to modify the loading facilities on the Property so long as they (i) comply with the minimum loading requirements of Subtitle C, Chapter 9, (ii) continue to accommodate head-in and head-out maneuvers, and (iii) accommodate access to the future Lot 47 project as contemplated under the final agreement between the Applicant and the Lot 47 Owner;
- k. 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;
- l. Signage: To vary the font, message, logo, and color of the approved signage, provided that (i) digital and neon signage shall not be permitted on the exterior of the project; (ii) the maximum overall dimensions and signage materials are consistent with the signage on the plans approved by the order; and (iii) the signage is compliant with the DC signage regulations; and
- m. Sustainable Features: To vary the approved sustainable features of the project, including the location of solar panels, provided the total number of LEED points achievable for the project does not decrease below the minimum required for the LEED standard specified by the order.

#### Inclusionary Zoning and Non-Required Affordable Housing

32. Due to the Property's location in the D-5 zone, the base building is not subject to the requirements or bonuses of the Inclusionary Zoning ("IZ") requirements of Subtitle C, Chapter 10. *See* Subtitle I § 539.2. However, use of penthouse habitable space devoted to residential units does generate an IZ requirement pursuant to Subtitle C §§ 1001.2(a)(3) and 1500.11. The Applicant is permitted to make a contribution to the Housing Production Trust Fund ("HPTF") to satisfy its IZ requirement resulting from the penthouse habitable space. However, the Applicant proposed to provide the IZ generated by the penthouse habitable space within Phase A of the Project, which amounts to one IZ unit provided at 50% of the Median Family Income ("MFI"), which satisfies the penthouse habitable space IZ requirement pursuant to Subtitle C §§ 1500.11 and Subtitle C, Chapter 10.



33. In addition to the one required IZ unit, the Applicant stated that it would provide 19 non-required affordable units (“Non-IZ Affordable Units”) at 60% of the MFI for the life of the Project. The Applicant stated that the Non-IZ Affordable Units would meet the following additional development standards that are required for IZ affordable units:
- a. The proportion of studio and one-bedroom Non-IZ Affordable Units will not exceed the proportion of studio and one-bedroom market rate units;
  - b. The Non-IZ Affordable Units will have comparable exterior design, materials and finishes to the market rate units;
  - c. The Non-IZ Affordable Units will have comparable interior amenities such as finishes and appliances as the market rate units;
  - d. The Non-IZ Affordable Units will not be overly concentrated on any floor of the Project; and
  - e. The Non-IZ Affordable Units will not be located in cellar space.
34. Because the provision of affordable housing beyond the amount required by IZ is outside of the Commission’s purview in this Design Review case, which is limited to the standards set forth in Subtitle I § 616, Subtitle I, Chapter 7, and Subtitle X § 901.2, the Commission has not taken into account the Non-IZ Affordable Units in deciding this Application and has not included the provision of the Non-IZ Affordable Units as a condition to this Order.

#### Applicant’s Justification

35. In addition to the testimony at the public hearing, the Applicant made a total of 11 submissions to the record in support of the Application:
- a. An initial application, dated June 22, 2020, requesting Design Review approval (the “Initial Application”); (Ex. 1-3H.)
  - b. A Comprehensive Transportation Review report, dated August 17, 2020, and submitted on August 31, 2020 (the “CTR”); (Ex. 12-12A2.)
  - c. A prehearing submission, dated September 11, 2020 (the “Prehearing Submission”); (Ex. 13-14E.)
  - d. A response to the ANC Resolution, dated September 29, 2020 (the “ANC Response”); (Ex. 32-32A.)
  - e. A response to the DDOT report, dated September 30, 2020 (the “DDOT Response”) (Ex. 35.)
  - f. Presentation materials for the originally scheduled October 1, 2020, public hearing, which were subsequently superseded by Exhibit 56A1-A9; (Ex. 36A1-A7.)

- g. A letter requesting to postpone the hearing to November 12, 2020, which was approved by the Commission; (Ex. 49.)
- h. A supplemental prehearing submission, dated November 3, 2020, (the “Supplemental Prehearing Submission”) filed prior to the postponed hearing date; (Ex. 52-52D.)
- i. Revised presentation materials for the November 12, 2020, public hearing (the “Hearing Presentation”); (Ex. 56A1-A9);
- j. An initial post-hearing submission dated December 7, 2020, (the “Initial Post-Hearing Submission”); (Ex. 60-60B) and
- k. A final post hearing submission dated December 31, 2020, (the “Final Post-Hearing Submission”). (Ex. 61.)

### Initial Application

- 36. The Initial Application included a complete set of architectural drawings as well as the Applicant’s justification for Design Review approval pursuant to Subtitle I § 616, Subtitle I, Chapter 7, and Subtitle X § 901.2.
- 37. The Initial Application included a request for flexibility to develop the Property with either the Project (residential with ground floor retail) or with a mixed-use building comprised of a residential tower and an office tower with ground floor retail. The architectural drawings included with the Initial Application provided complete designs for both alternatives; however, based on the Commission’s initial discussion at the October 1, 2020, public hearing and feedback from the ANC, the Applicant subsequently withdrew its request for flexibility to construct the mixed-use scheme.
- 38. The Initial Application also included a summary of witness testimony and resumes of the proffered expert witnesses, among other application requirements.

### CTR

- 39. The CTR concluded that the Project will not have a detrimental impact on the surrounding transportation network assuming the proposed site design elements, mitigation measures, and Transportation Demand Management (“TDM”) measures are implemented. The CTR found the following:
  - a. Vehicular trips generated by the Project would result in delays at three intersections and would therefore require mitigation in the form of signal timing and phasing adjustments following construction of the Project at M and Half Streets, SW for the morning peak hour; and (ii) South Capitol and I Street, SW/SE for the afternoon peak hour, which would mitigate delays at the intersection of Half and I Streets, SW as well.

- b. Although the Property is exempt from the parking requirements, in order to meet the parking demand of the residential and retail uses, the Project includes a total of 299 on-site parking spaces in a below-grade garage.
- c. The Project's loading facilities satisfy the zoning requirements and will accommodate all loading activity and delivery demand for the residential and retail uses without any detrimental impact to the surrounding transportation network. The Project has been designed to accommodate all loading activity and associated backing maneuvers within the Property.
- d. The Property is well-served by transit, including two Metrorail stations within a half-mile, and is served by local and regional bus routes. Several planned or proposed transit projects will improve transit access to the Property, including a peak-hour bus and bike lane on M Street. The Project is expected to generate a manageable amount of transit trips, and the existing service can accommodate these new trips.
- e. The Project will enhance the overall pedestrian environment by improving sidewalks along the perimeter of the Property. The Project is expected to generate a manageable amount of pedestrian trips, and the existing pedestrian facilities can accommodate these new trips.
- f. The Project is expected to generate a manageable amount of bicycle trips, and the existing bicycle facilities can accommodate these new trips. The Project will include long-term bicycle parking within the building and short-term bicycle parking along the perimeter of the Property that meet zoning requirements. The Project will also satisfy the practical needs of the development's employees, residents, and patrons for long- and short-term bicycle parking.

#### Prehearing Submission

40. The Prehearing Submission included the following information and materials:

- a. Updated architectural drawings and descriptions identifying how the Applicant had revised the building design based on continued feedback from the ANC and OP;
- b. A commitment to provide a minimum of 750 square feet of solar panels on the south facing penthouse walls, and a solar panel study showing the approximate locations;
- c. Updated calculations for the IZ requirement generated by the penthouse habitable space;
- d. Additional details on how the Application complies with the Design Review requirements for the M and South Capitol Streets Sub-Area (Subtitle I § 616), the general design review requirements for D Zones (Subtitle I, Chapter 7), and the special exception standards (Subtitle X § 901.2);

- e. An explanation that Subtitle X § 601.1 exempts the Project from demonstrating compliance with the standards for Design Review cases generally, which are set forth in Subtitle X, Chapter 6, and a corresponding explanation at Exhibit 14C of how the Application complies with the standards of Subtitle X, Chapter 6 even though they are not applicable. This explanation included analyses of the Project’s compliance with the Comprehensive Plan and the Southwest Neighborhood Small Area Plan (“SW Plan”) at Exhibit 14D;
- f. An update on the Applicant’s continued engagement with the ANC and the Applicant’s specific responses and modifications to the Project based on the ANC’s additional feedback; and
- g. The resume for the Applicant’s LEED consultant.

#### ANC Response

- 41. The ANC Response provided the Applicant’s written responses to the ANC resolution (Ex. 19) (the “ANC Resolution”) and made specific commitments that were requested by the ANC. The ANC Response addressed issues related to the Project’s gateway design, consistency with the surrounding architectural context of the Southwest neighborhood, and consistency with the design principles set forth in the SW Plan. The ANC response also included a preliminary lighting plan identifying the types and locations of lighting proposed for the Project (Ex. 32A) and a commitment that no architectural neon lighting would be incorporated into the Project. Finally, the ANC Response confirmed that the Project would not include any digital signs.

#### DDOT Response

- 42. The DDOT Response provided the Applicant’s written agreement to each of the conditions set forth in the DDOT Report, or where the Applicant did not agree with the condition, it provided a different condition to which the Applicant and DDOT had already agreed following submission of the DDOT Report. The DDOT Response also included an updated TDM plan that was previously agreed to with DDOT after submission of the DDOT Report.

#### Supplemental Prehearing Submission

- 43. The Supplemental Prehearing Submission included the following information and Project updates for the November 12, 2020 public hearing:
  - a. Removal of the Applicant’s request for flexibility to develop the Property with the mixed-use scheme, and a revised set of architectural drawings showing Project updates;
  - b. A summary of the Applicant’s continued engagement with the ANC, including updates to the building design, responses to questions raised by ANC commissioners in meetings following the October 1, 2020, public hearing, and non-design related updates and commitments specifically requested by the ANC;

- c. A detailed analysis of how the Project is in full compliance with the Design Review legal standards applicable to the Property;
- d. A commitment to provide 19 Non-IZ Affordable Units in the Project in addition to the one required IZ unit;
- e. A supplemental transportation memorandum demonstrating how the revised development program impacts the transportation aspects of the Project. The supplemental transportation memorandum also included an updated TDM plan; and
- f. An outline of testimony and resume for the Applicant's expert in zoning and land use planning.

### Hearing Presentation

- 44. At the November 12, 2020, public hearing, the Applicant presented the Project and responded to questions from the Commission. Robbie Saclarides testified on behalf of the Applicant, as did Shelly Mrstik, the Applicant's expert in architecture, Daniel VanPelt, the Applicant's expert in transportation planning, and Shane Dettman, the Applicant's expert in zoning and land use planning. The Commission granted expert status to Ms. Mrstik at the public hearing, and confirmed that Mr. VanPelt and Mr. Dettman had previously been qualified as experts before the Commission. The Commission did not grant expert status to the Applicant's LEED consultant.
- 45. The Applicant's Hearing Presentation provided further updates to the building design, an issue by issue response to the ANC's concerns, a summary of the Applicant's continued engagement with the ANC, and a summary of the Applicant's affordable housing commitment beyond the one required IZ unit, among other images and information regarding the Project.

### Initial Post-Hearing Submission

- 46. The Initial Post-Hearing Submission included the following additional information and materials requested by the Commission at the November 12, 2020, public hearing:
  - a. Revised architectural drawing sheets demonstrating updates to the Project based on comments from the Commission at the public hearing and from the ANC at the public hearing and at subsequent meetings following the hearing. The revised drawings demonstrated that the updated building design creates a more simplified and proportional overall Project.
  - b. An update to the Applicant's affordable housing commitment to provide (i) one required IZ unit at 50% of the MFI; and (ii) 19 Non-IZ Affordable Units at 60% of the MFI that would also comply with many of the development standards required for IZ units (e.g. unit proportionality, exterior design and materials, interior amenities, and the location of units within the Project).

- c. A summary of the Applicant’s overall commitment to affordable housing in the Washington, DC region, and an analysis of the Project’s compliance with the applicable standards of review under the Zoning Act, the Zoning Regulations, and the Comprehensive Plan.
- d. A plan showing the revised location for the one required IZ unit and a commitment that the Project would include a minimum of 1,000 square feet of solar panels, which were the only two outstanding items requested by OP in the Supplemental OP Report (defined below).
- e. An update on the Applicant’s continued engagement with the ANC.

Final Post-Hearing Submission

47. The Final Post-Hearing Submission included the following additional information and materials requested by the Commission at the November 12, 2020 public hearing:
- a. A complete set of updated architectural plans and elevations that incorporated all of the feedback from the ANC following the public hearing (the “Approved Plans”);
  - b. A description of the Applicant’s continued work with the ANC and responses to the ANC’s final comments and concerns;
  - c. An update on the Applicant’s Agreement with the Lot 47 Owner;
  - d. A response to comments raised by individuals at the public hearing and in written testimony regarding the Project’s impact on affordable housing, gentrification, and displacement in the Southwest neighborhood; and
  - e. An updated request for design flexibility.

Responses to the Application

OP Report

48. OP filed a report dated September 21, 2020 (Ex. 17) (the “OP Report”) recommending approval of the Application subject to the following conditions:
- a. The Applicant shall agree to the following condition to provide an easement to the owner of Lot 47:
 

“The applicant shall, when development moves forward on Lot 47, provide an easement to the owner of Lot 47 that will allow a future project on Lot 47 to use the 22 foot wide north-south portion of the applicant’s private driveway to access parking and loading for Lot 47, provided any driveway width greater than 22 feet that is needed to accommodate the additional vehicular and truck traffic for Lot 47 shall be added to the applicant’s driveway solely from land within Lot 47”.

The OP Report noted that the Applicant had agreed to this condition; and

- b. The Applicant shall agree to the following condition regarding building signage:

“Signage shall follow the guidelines in Exhibit 14A7 pages 90 – 96 and pages 156 – 163, with the exception of the location of upper level signage, which shall be limited to M Street, S.W. One upper level sign may be located as shown on Exhibit 14A7 page 92, but with the right edge of the sign extending no further east than a line extending upward from the rightmost edge of the 9th and 10th floor fenestration of the bay that is immediately below it. A second upper-level sign may be located on the parapet above the 5th bay west of the 9th and 10th floor setbacks from South Capitol Street.”

The OP Report noted that the Applicant had agreed to this condition.

49. In reviewing the design of the Project, OP found that it would meet all use and dimensional requirements of the Zoning Regulations as well as all applicable Design Review standards of (i) Subtitle I § 616 for buildings within the M and South Capitol Streets Sub-Area; (ii) Subtitle I, Chapter 7 for Design Review for the downtown zones; and (iii) Subtitle X, Chapter 9 for the general special exception review criteria. (Ex. 17, p. 5, 1.)

50. Furthermore, the OP Report found that a “design review application in a downtown zone sub-area is not required to undergo as extensive a review as what is required, for example, for a PUD or for a project in Capital Gateway zones. It is specifically exempted from the design review process in Subtitle X, Chapter 6 by [Subtitle] X §601.1 It does not, for instance, require a review of the project’s relationship to the Comprehensive Plan, as the development under either alternative would have to be consistent with current zoning. The design review regulations that must be considered are contained within Subtitle I and are noted in the second paragraph on page 1 of this report.” (Ex. 17, p. 4.)

#### OP Supplemental Report

51. OP filed a supplemental report dated November 10, 2020 (the “Supplemental OP Report”) (Ex. 55), which analyzed the updates to the Application made by the Applicant following the October 1, 2020 public hearing. The Supplemental OP Report recommended that the Commission approve the Application and reiterated that the design meets the criteria of Subtitle I § 616, Subtitle I, Chapter 7, and Subtitle X Chapter 9. (Ex. 55, p. 1.)

52. OP’s recommendation of approval was subject to the following two conditions, which were “intended to help ensure a coordinated and reasonable approach to vehicular and loading access on this block and to minimize impacts on pedestrian ways, in accordance with the intent of the review process”:

- a. “Prior to a Zoning Commission decision on this application, the District Department of Transportation (DDOT) shall provide confirmation to the record that the design of the building and the proposed north-south driveway to be entered from

L Street would enable reasonable access to parking and loading for a future building on Square 649, Lot 47; and

- b. “Prior to the issuance of a building permit for the applicant’s building, the applicant shall have recorded an easement agreement permitting the owner of Lot 47 to use the northsouth driveway described above to access loading and parking for a future building on Lot 47.” (Ex. 55, p. 2.)

The OP Report noted that the Applicant had agreed to these conditions.

53. The OP Supplemental Report also set forth additional conditions agreed to by the Applicant in response to concerns raised by the ANC. The OP Supplemental Report stated that OP did not object to the conditions, which are as follows:

- a. “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.
- b. “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.
- c. “For the life of the Project, the Applicant 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.” (Ex. 55, p. 2.)

54. The OP Supplemental Report requested that the Applicant provide the following information to the record prior to a decision on the Application:

- a. Submit a plan showing the proposed location of the approximately 616 square feet of IZ space that the Applicant estimates the penthouse residential units would require under Subtitle C § 1500.11 and Subtitle C, Chapter 10; and
- b. Clarify whether the newest design proposes the incorporation of 750 square feet of solar panels, as had been included in earlier designs. (Ex. 55, p. 2.)

55. With respect to affordable housing, OP stated that the affordable housing requirement for the penthouse residential space would be met, but that “[t]here is no other IZ requirement in the D-5 zone.” OP acknowledged that the Applicant “agreed that an additional 19 on-site non-IZ units would be voluntarily reserved for the life of the project for households earning no more than 80% of the MFI.” (Ex. 55, p. 3.)

56. The OP Supplemental Report evaluated the updated project design against the Design Review standards and reiterated that “[a] design review application in a downtown zone sub-area is not required to undergo as extensive a review as what is required, for example, for a PUD or for a project in Capital Gateway zones. It is specifically exempted from the design review process in Subtitle X, Chapter 6 by X §601.1. It does not, for instance,



require a review of the project's relationship to the Comprehensive Plan, as the development under either alternative would have to be consistent with current zoning. The design review regulations that must be considered are contained within Subtitle I and are noted in the second paragraph on page 1 of this report." (Ex. 55, p. 5.) Accordingly, the OP Supplemental Report provided an analysis on how the Project is in conformance with Subtitle I §616, Subtitle I, Chapter 7, and Subtitle X § 901.2. (Ex. 55, pp. 5-9.)

#### OP Public Hearing Testimony

57. OP testified in support of the Project at the public hearing and reiterated conclusions from its report that the Project is fully compliant with all applicable design review requirements. *See* 11/12/2020 public hearing transcript, pp. 87, where OP states that "this this project meets Subtitle X's special exception criteria; Subtitle I, Chapter 7's design criteria for Downtown; and Subtitle I, Section 616's criteria specific to the M and South Capitol Street sub-area it's located in. And, accordingly, OP recommends approval of the application."

#### OP Post-Hearing Report

58. OP filed a Post-Hearing Report dated January 8, 2021 (the "Post-Hearing OP Report") (Ex. \_\_\_\_).

#### DDOT Report

59. DDOT filed a report dated September 18, 2020, (Ex. 16) (the "DDOT Report") stating no objection to approval of the Application with the following conditions:

- a. The Applicant records a non-restrictive easement with the Office of the Surveyor and accompanying easement agreement with DDOT for a portion of the north-south driveway adjacent to Lot 47 to ensure vehicular access is available to that property when it redevelops; and
- b. The Applicant implement the TDM plan proposed in the Applicant's August 17, 2020 CTR, for the life of the Project unless otherwise noted, with the following additions, subject to DDOT approval:
  - i. Include curb extensions at the three Half and L Street, SW intersections surrounding the Property.
  - ii. Include the short missing segment of sidewalk on the north side of L Street, SW;
  - iii. Include two four-dock expansion plates to the existing Capital Bikeshare station at M and 1<sup>st</sup> Street, SW; and
  - iv. Include five Years of annual Capital Bikeshare passes to all residents (one per unit).

60. In reviewing the Project, DDOT concurred with the Applicant's proposed access and circulation scheme that provides all vehicular parking and loading access via two private driveways with an internal connection for circulation. (Ex. 16, p. 2.) DDOT also found that the "transportation network can handle the additional site-generated traffic with mitigation implemented (e.g., signal timing adjustments and additional TDM measures)." (Ex. 16, p. 3.)
61. DDOT found that the Project meets the minimum requirements for loading berths, delivery spaces, and loading platforms, and that all loading operations and maneuvers will occur on private property with head-in and head-out movements through public space, consistent with DDOT standards. (Ex. 16, p. 2). DDOT found that the Project does not have a minimum off-street parking requirement because it is located in the D zone, and also found that the Project meets the minimum requirements for long- and short-term bicycle parking. (Ex. 16, p. 2, 7.)
62. As stated in FF Nos. 42 and 43(e), the Applicant worked with DDOT following submission of the DDOT Report and prior to the public hearing to make certain revisions to the TDM plan, which were agreed to by DDOT and which are set forth in the Applicant's DDOT Response (Ex. 35) and Supplemental Prehearing Submission (Ex. 52C) and which are included as conditions to this Order.

#### DDOT Public Hearing Testimony

63. DDOT testified in support of the Project at the public hearing following the Applicant's presentation which included a summary of the revised TDM measures that were set forth in the Applicant's DDOT Response (Ex. 35) and Supplemental Prehearing Submission (Ex. 52C). DDOT stated that DDOT and the Applicant had "agreed on all the conditions to mitigate the project's impact to the transportation system. These included a robust Transportation Demand Management plan, construction of curb extensions at three corners surrounding the site, expansion of a nearby Bikeshare station, and a contribution to DDOT's Transportation Mitigation Fund which we will use towards bike-ped transit and Bikeshare improvements around ANC 6D." See 11/12/2020 public hearing transcript, pp. 87-88.
64. DDOT also confirmed its support for the two easement conditions proposed by OP, which were drafted in response to the Applicant's revised site design that contemplates the building's shift to the Lot 47 property line and "are intended to ensure Lot 47 has reasonable access to the shared north-south driveway." See 11/12/2020 public hearing transcript, p. 88. Accordingly, with the "agreed-to transportation conditions and the revised easement" DDOT stated that it had no objection with the approval of the Application. *Id.*

#### DDOT Post-Hearing Report

65. DDOT filed a Post-Hearing Report dated January 8, 2021 (the "Post-Hearing DDOT Report") (Ex. \_\_\_\_).

#### ANC Resolution

66. ANC 6D submitted a report (the “ANC Resolution”) (Ex. 19) stating that at its regularly scheduled and properly noticed public meeting held on September 14, 2020, with a quorum of commissioners present, ANC 6D voted 7-0-0 to oppose the Application and to authorize Chair Gail Fast to testify on behalf of ANC 6D at the public hearing. The ANC stated its opposition to the Application for the following reasons:

- a. Gateway Design. The ANC Resolution stated that the design of the Project did not properly demonstrate the “gateway” architectural transition from the mixed-use neighborhood on the east side of South Capitol Street to the residential neighborhood on the west side of South Capitol Street, and that the Applicant should lower the portion of the building that fronts on South Capitol Street to create a “more visually compelling and physically welcoming entry” to the neighborhood. (Ex. 19, pp. 1-2.)
- b. Southwest Architectural Context. The ANC Resolution stated that the Project does not reflect the “various architectural elements of the Southwest neighborhood” and does not include enough balconies or varying building heights that are present in other buildings within the neighborhood, including the recently approved Bard complex. (Ex. 19, p. 2.) The ANC Resolution also referenced that the ANC believed the Project appeared jumbled with “boxy squares” and “teetering windows” and did not allow for sufficient air, light, or views. (Ex. 19, p. 2.) Accordingly, the ANC requested that the Applicant incorporate more modernist elements into the building design, and cited to various residential developments throughout Southwest (i.e., Tiber Island, Carrollsburg Square, the Randall School, the Bard) that the Project should emulate.
- c. Consistency with the SW Plan. The ANC Resolution stated that the Applicant did not demonstrate how the Project fits within the confines of the SW Plan or the six design principles set forth in the SW Plan as follows:
  - i. Principle 1: The ANC stated that the Project does not provide lower building heights that complement the mix of lower rise buildings and row houses in the surrounding area; (Ex. 19, p. 2-3.)
  - ii. Principle 2: The ANC stated that the Project does not achieve design excellence because it has an “industrial look of tissue boxes” that appear to jut out into pedestrian space; (Ex. 19, p. 3.)
  - iii. Principle 3: The ANC stated that the Project does not promote a cohesive design with three separate “buildings” that are so busy that there is no continuity to the streetscape and no unification between the Project components; (Ex. 19, p. 3.)
  - iv. Principle 4: The ANC stated that the Project should incorporate public access to Lansburgh Park and should preserve the existing Heritage Tree abutting the Property and the Special Trees on the Property; (Ex. 19, p. 3.)

- v. Principle 5: The ANC requested that the Applicant provide information on how the Project meets the requirements for OP’s Flood Resilience Strategy; (Ex. 19, p. 3.)
  - vi. Principle 6: The ANC requested that the Applicant (i) finalize the easement with Lot 47 before the Application is approved; and (ii) include a clause in tenant leases indicating that they will not be eligible for RPP. The ANC also stated that the Applicant did not provide a proper trip generation and it therefore could not analyze the impact on traffic, and that the Applicant has not provided any plans for its retail space. (Ex. 19, p. 4.)
- d. Lighting. The ANC Resolution requested additional details on the Applicant’s lighting plan for the Project, including a commitment that the Project would not include any neon lighting.
  - e. Signage. The ANC Resolution requested additional details on the Applicant’s signage plan for the Project, including a commitment that the Project would not include any digital signs.
  - f. Heritage Tree. The ANC Resolution stated that the Applicant should preserve the existing Heritage Tree abutting the Property. (Ex. 19, p. 3.)

#### ANC Letter

67. The ANC also submitted a supplemental letter dated September 24, 2020, regarding the Applicant’s affordable housing commitment (the “ANC Letter”). (Ex. 19A.) The ANC Letter recognized that the “IZ requirements are not part of the Zoning Commission’s purview with respect to design review” but stated that the Applicant “ought to” provide affordable housing even though it is not required. (Ex. 19A, p. 1.)

#### ANC Supplemental Resolution

68. The ANC submitted a response to the Applicant’s Supplemental Prehearing Statement, dated November 10, 2020, stating that at a regularly scheduled and properly noticed special meeting on October 27, 2020, with a quorum of commissioners present, ANC 6D voted 5-0-0 to oppose the Project (the “ANC Supplemental Resolution”). (Ex. 54.)

69. Setbacks and Tiering. The ANC Supplemental Resolution stated that the ANC continued to meet with the Applicant following the October 1, 2020 public hearing to discuss its concerns regarding the Project, but that it still believed that the Project was “architecturally heavy-handed, domineering and unwelcoming.” (Ex. 54, p. 1.) The ANC Supplemental Resolution provided additional comments on the architectural design of the Project, including that the Project does not provide sufficient “teiring” along M Street as it moves towards the Southwest neighborhood and lacks continuity between the various building components. The ANC Supplemental Resolution also referenced the ANC’s distaste for the design of the tilted hopper windows on M and South Capitol Streets and the hanging balconies on L and Half Streets. (Ex. 54, p. 2.)

70. Exoskeleton. The ANC Supplemental Resolution requested that the Applicant use the concrete framing as an “exoskeleton” to wrap the entire Project.
71. Parking Operation. The ANC Supplemental Resolution also stated that the zoning order should restrict the Applicant from operating or leasing out any portion of the parking garage to any parking company to serve anything other than tenants within the building. (Ex. 54, p. 2.)
72. Extension of L Street Façade. The Supplemental Resolution further stated a concern with the Applicant’s proposal to extend the east façade of the North Tower over the private drive due to concerns with at-risk windows and establishing a condition where the parking and loading entrance would be located directly below residential units. (Ex. 54, p. 2.)
73. Affordable Housing. Finally, the ANC Supplemental Resolution reiterated the ANC’s concern with the Applicant’s proposal to provide 19 Non-IZ Affordable Units, which was not a high enough number of units and were not being provided at a deep enough level of affordability. (Ex. 54, p. 3.)

#### ANC Post-Hearing Report

74. The ANC filed a Post-Hearing Report dated January 7, 2021 (the “Post-Hearing ANC Report”). (Ex. 64.) The Post-Hearing ANC Report stated that at its regularly scheduled and properly noticed special meeting held on December 14, 2020, the ANC voted 6-0-0 to take no additional action regarding the Application, and therefore confirmed its previous opposition to the Project.
75. The Post-Hearing ANC Report reiterated its previously-stated opposition to the Project regarding the following issues:
  - a. The Project does not embody an appropriate “gateway” design;
  - b. The Project is inconsistent with the surrounding Southwest neighborhood’s architectural context;
  - c. The Project does not incorporate sufficient tiering on M Street;
  - d. The Project does not include enough balconies;
  - e. The Project architecture results in an incoherent overall design; and
  - f. The Project does not provide enough affordable housing, and is therefore inconsistent with the SW Plan.

#### Lot 47 Owner

76. On November 3, 2020, the Lot 47 Owner submitted a request for party status in opposition to the Application, which the Commission granted at the November 12, 2020, public hearing (the “Party Status Request”) (Ex. 53-53B) and also testified in opposition to the

Application at the public hearing. The Party Status Request included a motion for enlargement of time to accept the Party Status Request less than 14 days in advance of the hearing, which the Commission also granted at the public hearing.

77. The Party Status Request stated that the Lot 47 Owner owns Lot 47 in Square 649, which abuts the Property, and that the Applicant's proposal to extend the east wall of the North Tower over the private drive along L Street would negatively impact access to future development on Lot 47. The Party Status Request stated that the Project does not adequately address vehicular access, circulation, transformer location, construction timing and staging, and other inter-related issues that will affect the future development of Lot 47, as well as the streetscape and traffic in the surrounding neighborhood. (Ex. 53A, p. 2.)
78. The Party Status Request stated that extending the east wall results in the placement of columns running along the private drive in the north-south direction thus creating "an obstacle course that does not provide sufficient space for trucks and cars to enter, maneuver within, or exit from a future development" on Lot 47. (Ex. 53A, p. 2.) The Party Status Request claimed that the proposal would "make it impossible to achieve proper loading and parking at [Lot 47], consistent with applicable law and policies, when [Lot 47] is developed in the future." (Ex. 53A, p. 2.) The Party Status Request further stated that the scope of the proposed easement area, as well as the provisions for operating within the easement area, have not been fully studied and developed and should be finalized before the Project is permitted to proceed. (Ex. 53A, pp. 2.)
79. Despite the foregoing, the Party Status Request acknowledged that the purpose of the private drive and attendant easement is to comply with DDOT's desire to permit only one curb cut on L Street for the entire Square (*see* Ex. 16) and with the Zoning Regulations' prohibition against curb cuts on South Capitol Street. *See* Subtitle I DCMR § 616.7(e). (Ex. 53A, p. 2.) The Party Status Request also stated that the Lot 47 Owner is generally supportive of the Project and has had discussions with the Applicant to ensure that the Project will not adversely affect the future use or development of Lot 47.
80. Following the public hearing the Applicant worked closely with the Lot 47 Owner to come to an agreement on the layout and operation of the private drive that will be used to access the Property and future development on Lot 47. Specifically, the Applicant and the Lot 47 Owner (i) identified column spacing within the private driveway that will allow for adequate access to the Lot 47 parking and loading facilities and service areas; (ii) shifted the phasing line for the Project so that if development of Lot 47 occurs between Phases A and B of the Project, then during construction of Phase B access to Lot 47 can be provided from Half Street; and (iii) confirmed that a temporary portion of the north-south private drive will be constructed during Phase A, such that the private drive can be accessed from L Street until construction of Phase B at which point the temporary condition will be closed and the final condition will be constructed and re-opened upon completion of Phase B. The agreement between the two parties did not result in any modifications to the exterior of the building and was designed to eliminate any potential impacts to Lot 47 if development of Phase B occurs after development of Lot 47. (Ex 61 and 61B.)

81. In order to effectuate the final agreement between the Applicant and the Lot 47 Owner, the Applicant requested design flexibility to revise the final dimensions and column spacing within the private drive to accommodate vehicular access to Lot 47 as the design of that project moves forward and to revise the loading facilities during development of Phase B of the Project so long as the Project as a whole continues to comply with the minimum loading requirements of the Zoning Regulations. Design flexibility addressing these two items have been included in this Order.
82. As requested by the Office of Planning in its Supplemental Report dated November 10, 2020, and as agreed to between the Applicant and the Lot 47 Owner, the Applicant agreed to record an easement agreement prior to the issuance of a building permit for the Project, which would permit the owner of Lot 47 to share in the use of the private drive for purposes of ingress and egress to parking, loading, and service areas associated with future improvements on Lot 47, and to provide a copy of the recorded easement agreement to the DDOT Planning & Sustainability Division prior to issuance of the building permit for the Project. These requirements are included as conditions to this Order.
83. To accommodate the agreement between the Applicant and the Lot 47 Owner, the Applicant proposed additional requirements regarding Project phasing, timing for public space approval for construction of the proposed curb cuts on Half and L Streets, and the specific height and width clearances for the north-south and east-west segments of the private drive. (Ex. 61.) Upon further coordination and agreement among the Lot 47 Owner, OP, and DDOT following issuance of the Applicant's Final Post-Hearing Submission, the Applicant made minor revisions to the conditions related to the easement agreement, which have been included as conditions to this Order. (Ex. \_\_\_ [*APPLICANT'S COVER LETTER SUBMITTING DRAFT ORDER*].)
84. By letter dated January 7, 2021, the Lot 47 Owner withdrew its opposition to the Application and offered its support for the Project based on the agreement reached between the Applicant and the Lot 47 Owner and the final condition language related to the easement agreement that is included in this Order. (Ex. 63.)
85. Based on the foregoing Findings of Fact, the information provided in the Applicant's Final Post Hearing Submission (Ex. 61) and Proposed Order (Ex. \_\_\_), and the Lot 47 Owner's withdrawal of its opposition to the Application (Ex. 63), the Commission finds that the Applicant has fully addressed the concerns raised by the Lot 47 Owner such that development of the Project will not result in adverse effects on vehicular access to future development on Lot 47.

### Other Responses

#### Responses in Support

86. The president of the Capitol Riverfront Business Improvement District ("BID") submitted a letter dated October 2, 2020, stating the BID's support for the Project because it would "significantly enhance and serve the surrounding community, particularly given the increasing residential demand and the need for new housing in the District" and that the

ground floor retail and service uses would serve the community and fill a void at the intersection that is presently underutilized. (Ex. 50.) The BID's letter also indicated support for the "architectural design, massing, and density" of the Project, which would "enhance the South Capitol Street corridor and establish the site as an important gateway location between Southeast and Southwest neighborhoods."

87. A Senior Vice President of Boston Properties submitted a letter on October 2, 2020, expressing strong support for the Project given that it would enhance the South Capitol Street corridor and would include "high-quality materials and articulated façade details that will together create an attractive new building along all street frontages." (Ex. 51.)

### Responses in Opposition

88. Several residents of the Southwest neighborhood submitted letters and information in opposition to the Application (Ex. 15, 18, 20-26, 28-31, 33-34, 37-39, and 41-48) and three individuals testified in opposition to the project at the public hearing (individuals providing written and/or oral testimony referred to as the "Opposition").
89. The overarching concern stated by the Opposition was that the Southwest neighborhood needs more affordable housing units at deeper levels of affordability and at a range of unit sizes that will support a diverse population including families, but that the housing and affordable housing in the project does not satisfy those needs. The Opposition stated that longtime residents and particularly residents of color were being forced out of the neighborhood as a result of recent development trends that swayed heavily towards smaller "luxury housing" units and drove up rent prices and that the project would exacerbate those trends. *See, e.g.* Ex. 21, 22. Many of the Opponents specifically stated that the Project should be comprised of 1/3 "deeply affordable" units, 1/3 "workforce housing" units, and 1/3 market rate units. *See, e.g.* Ex. 33, 34. In raising concerns with affordability and "gentrification" generally (*see, e.g.* Ex. 29, 30), the Opposition alleged that the Project was inconsistent with the SW Plan, including its goal to "remain an exemplary model of equity and inclusion," and also inconsistent with the Mayor's goal of providing 12,000 affordable units across the District.
90. On October 1, 2020, Councilmember Charles Allen of Ward 6 submitted a letter to the record stating his concern with the "inadequate inclusion of affordable housing" in the Project and recommending that the Applicant "dramatically increase the number and size of affordable homes." (Ex. 40.) Councilmember Allen's letter stated that the Project was "not consistent with the Council approved Southwest Small Area Plan" and stated that the Project was out of character with its unique gateway location, inconsistent with the row homes to the south, and lacks a cohesive and unified vision.
91. On January 7, 2021, Councilmember Allen submitted a letter to the record withdrawing his opposition to the Application. (Ex. 62.) The Councilmember summarized the Applicant's increased commitment to providing affordable housing in the Project, which had increased since his initial review of the Project in October, 2020. Councilmember Allen also stated his appreciation for the work of the community, ANC 6D, and the Applicant to address community concerns.



## Applicant's Responses to ANC Issues and Concerns

92. As set forth in FF Nos. 66-75 of this Order, ANC 6D raised a number of concerns related to the Project. The Applicant responded to each of these concerns in its filings to the case record (Ex. 3, 14, 32, 52, 60 and 61) and through testimony at the public hearing, and accordingly the Commission makes the following conclusions as to each.

## Applicant's Responses to ANC Issues and Concerns Raised in the ANC Resolution

93. Gateway Design. As stated in FF No. 66(a), the ANC raised concerns that the Project did not properly demonstrate a “gateway” architectural transition from the mixed-use neighborhood on the east side of South Capitol Street to the residential neighborhood on the west side of South Capitol Street, and further stated that the Project should be lowered at the corner to create a more “visually compelling and physically welcoming entry.” (Ex. 19, pp. 1-2.)

- a. Despite the ANC's claims, and for the reasons stated below, the Commission finds that the Project was appropriately designed as a “gateway” into the Southwest because the building has been designed to respect the monumental corridor of South Capitol Street, emphasize the significance of the “corner” at the intersection of the two important streets, and create an appropriate transition into the more residential character of the Southwest neighborhood. (*See, e.g.* Ex. 32, 52.)
- b. The Commission finds that the Project institutes a strong street presence along South Capitol Street, with a masonry retail base at the ground level and an 130-foot tall glass and concrete modernist tower above, with setbacks at 110 feet. This design establishes the western wall of the view corridor towards the Capitol, maintaining monumental views down the civic boulevard which will “ensure the preservation of the historically important axial view of the Capitol Dome” in accordance with the stated objectives of the M and South Capitol Streets Sub-Area.
- c. The prominent corner at M and South Capitol Street incorporates distinctive architectural elements that create an appropriately-scaled and uniquely-identified gateway into the Southwest. In this location, the building includes corner projecting bays to the east and south within the large gridded fenestration and precast concrete to emphasize the importance of the M and South Capitol Street intersection. The scale of the upper level grid massing and interlocking forms anchor the building at the corner and underscore the high-density zoning of the Property. A variety of terraces are also provided at the corner held together with the framing of structural columns, and an open re-entrant corner is provided at the ground level to enhance the pedestrian experience at the intersection. Providing these cut-outs and highlighting the corner architecture allows for the Project to continue to respect the streetwall along both South Capitol and M Streets while creating a light and airy open expression at the corner and emphasizing the gateway entrance into the Southwest neighborhood. The Commission finds that providing a lower height at this corner as requested by the ANC would be inconsistent with the objective of the M and South Capitol Street Subarea to create a “high-density mixed-use corridor”

and would create a break in the streetwall which is intended to frame the views from the south towards the Capitol to the north.

- d. The Project creates appropriate transitions from the high-density corridor of South Capitol Street into the more-residential character of the Southwest neighborhood. Design elements of the South Tower reflect the mid-century modern characteristics of buildings in the surrounding neighborhood, and along M Street the building includes lower building heights as the building moves away from South Capitol Street and towards the lower-density residential neighborhood to the west. In addition, the building's brick podium establishes a horizontal connection to the surrounding low-rise townhomes and includes walk up units and traditional masonry to reflect their architectural design.
  - e. Accordingly, the Commission finds that the Project reflects the Property's important gateway location by respecting the monumental South Capitol Street corridor, creating a streetwall to frame views towards the Capitol, providing a unique, high quality architectural design, and establishing an appropriate transition from the high-density corner at South Capitol Street into the lower-rise residential neighborhood to the south and west.
94. Southwest Architectural Context. The ANC stated that the Project does not reflect the various architectural elements of the Southwest neighborhood, including a lack of a sufficient number of balconies and building heights that are present in other buildings within the neighborhood. (Ex. 19, p. 2.) The ANC further alleged that the Project "creates a jumbled building of boxy squares and teetering windows within an imposing block of concrete. There is precious little room for air, light, or views..." (Ex. 19, p. 2.)
- a. Despite the ANC's assertions, the Commission finds that the Project fits well within its context, which includes both (i) the South Capitol Street corridor, which is intended for high density development and (ii) the Southwest neighborhood, which has its own architectural context. The Project establishes the important streetwall that is needed along the east building façade to create the desired view corridor towards the Capitol, and incorporates a variety of height step-downs along M Street to as it moves west. At the pavilion corner, the building materiality transitions to a more glass and metal palate to increase porosity and bring light and air through the site. These setbacks, step downs, façade articulations, and change in materials provide an appropriate transition as the building moves closer to the surrounding residential neighborhoods. Along Half Street, the Project incorporates direct walk-up units with traditional "stoops" and brick masonry to pay respect to the row homes in the immediate area.
  - b. The Applicant incorporated design elements from the Southwest's architectural vernacular. Based on the ANC's request to see more modernist elements in the Project, the Applicant's design team fully redesigned the "hyphen" element that was present on the L and South Capitol Street facades in the original Application filing to incorporate a more articulated structure and create more legible floor slabs and building column grid. The redesign also involved the addition of balconies in

a style that reflects Southwest architecture, and a three-foot setback along M Street at the ground level to create the impression that the building floats above the podium, which is consistent with the more traditional design aesthetic seen throughout Southwest. The Applicant also converted the materiality of the South Tower from brick to concrete in direct response to the ANC's request for the Project to better mimic the surrounding architectural context.

- c. While the ANC cited to various residential developments throughout Southwest (e.g., Tiber Island, Carrollsburg Square), the Commission credits the Applicant's assertion that these developments are located within areas zoned for moderate and medium density development, unlike the Property which is zoned and planned for high density development. Within Southwest, only three blocks are zoned D-5 – all of which are in the M and South Capitol Streets Subarea which specifically calls for the creation of a high density corridor. Within this small number of squares, the only existing context is the Skyline hotel which was constructed around 1962 and incorporates elements of the Southwest design aesthetic, including multiple framed stories within a gridded structure. The Commission finds that the Project incorporates a modern twist on these elements and appropriately reflects the Southwest culture that exists in this limited area slated for the high density corridor.
- d. Despite the fact that the residential developments cited by the ANC are not similarly-situated to the Property, the Commission finds that the Applicant worked to include elements from these developments into the Project. For example, the Applicant incorporated traditional balconies into the design of the North Tower, which are a common design element seen throughout Southwest and which complement the outdoor spaces provided as inset balconies on the South Tower. The balconies further represent the residential use of the building, adding human scale within the overall composition. The Applicant also revised the balconies on the South Tower by removing the previously-proposed hopper-style balconies with traditional inset balconies, again reflecting surrounding design motifs for balconies in the Southwest.
- e. The Commission specifically finds that the ANC inappropriately compared the Project to the Randall School development, stating that the Project should incorporate similar design elements such as street setbacks, open space, preservation of the building's historic structure, and blending of the neighborhood's older structures with newer design concepts. (Ex. 19, p. 2.) The Commission recognizes the value of this design but agrees with the Applicant that the Randall School was reviewed and approved in an entirely different context. First, the Randall School is an historic building, which necessitated specific design, massing, height, and setback considerations that are not applicable to the Property, which is not historic and does not have an existing building other than the non-historic 7-11 structure which will be removed. Second, the Randall School is located at 820 Half Street, SW, which is a block to the west of South Capitol Street and behind the Randall Recreation Center facilities. Thus, the Randall School redevelopment is not subject to the design standards for South Capitol Street, which require the creation of a consistent street wall and strong architectural framing of

views towards the Capitol. Third, the Randall School was approved as part of a PUD, which has different purposes and evaluation standards from the design review standards applicable to the Property, and was rezoned from R-4 (RF-1) to C-3-C (MU-9), which is a medium-high density zone. The GPM designates the Randall School in a Neighborhood Conversation Area, while the Property is designated in a Land Use Change Area. Therefore, the Commission finds that the Randall School project is not similarly-situated to the Project, as the two properties are located within entirely different zoning, land use, and historic designation contexts.

- f. Based on the foregoing, the Commission finds that the final Project design is consistent with and respects the surrounding architectural vernacular of the Southwest neighborhood and is appropriately designed to fit within its context.

95. Consistency with the SW Plan. The ANC asserted that the Applicant did not demonstrate how the Project fits within the confines of the SW Plan, including several of its specific design principles. (Ex. 19, p. 2-4.)

- a. Pursuant to Subtitle X § 601.1, an evaluation of the Project’s consistency with SW Plan is not required as part of the subject Design Review application. However, because the Project is located within the boundaries of the SW Plan, the Applicant provided a detailed analysis of how the Project is consistent with the goals and objectives of the SW Plan (Ex. 14D) and how the Project is fully consistent with the specific design guidelines established in the SW Plan (Ex. 52B). The Applicant also provided specific responses to the ANC’s allegations that the Project did not comply with many of the SW Plan’s design principles (Ex. 32, pp. 4-8). The Commission reviewed the Applicant’s analyses as to the Project’s consistency with the SW Plan, its design guidelines, and specifically how the ANC claimed that the Project did not comply with those guidelines (Ex. 14D, 32 and 52B), and finds that although the Project is not required to demonstrate consistency with the SW Plan, that the Project nevertheless is fully consistent with the goals and objectives of the SW Plan and with the specific design guidelines that are applicable to the Property.
- b. Moreover, at the public hearing Mr. Dettman testified about how the Project fully embodies all of the SW Plan’s design principles. The Approved Plans also provide a detailed analysis of how the Project is fully consistent with the design guidelines set forth in the SW Plan (Ex. 61A, Sheets 15-24) as follows:
  - i. Principle 1: Encourage a Mix of Heights (Ex. 61A, Sheet 16) – The Project provides a variety of heights, including 130 feet as the maximum building height, setbacks at 110 feet on both the North and South Towers, a reduced height of 80 feet at the top of the pavilion, and 20 feet in height at the base of the pavilion.
  - ii. Principle 2: Achieve Design Excellence (Ex. 61A, Sheet 17) – The Project achieves design excellence by providing durable and attractive materials such as concrete, brick, and glass, with metal and wood accents throughout. Recessed balconies and windows are used throughout to provide shading.

- iii. Principle 3: Variation in Building Frontage (Ex. 61A, Sheet 18) – The Project provides significant variation in building frontage. The North and South Towers provide larger scale openings with modernist brick, concrete, and glass. The pavilion has smaller scale openings with different materiality and visual porosity. Building setbacks are provided from the property line to provide greater pedestrian space and landscaping at the ground level on M and L Streets and to make the building appear more light and airy. The Project also provides articulated party walls where the Property abuts Lot 47.
- iv. Principle 4: Enhanced Green Space (Ex. 61A, Sheets 19-20) – The Project provides enhanced green space throughout. At the ground level, the Project includes a thoughtful streetscape with green perimeters, landscaping, street trees, and building setbacks where appropriate. Internal to the Project is a large courtyard and various roof terraces that are provided for resident recreation and to foster healthy living. The roof of the pavilion is comprised of green terraces that are visible from M and Half Streets. The roofs of the North and South Towers also provide landscaped roof terraces for resident community interaction.
- v. Principle 5: Incorporate Sustainable Design (Ex. 61A, Sheet 21) – The Project includes significant sustainable design elements, including new street trees and landscaping, on-site stormwater retention facilities, green roof areas to reduce water runoff, a cooling tower, and solar panels.
- vi. Principle 6: Ensure Parking is Not a Detractor (Ex. 61A, Sheet 22) – The Project was designed to ensure that parking is not a detractor by consolidating all parking and loading access to an internal private drive accessed from L and Half Streets. All parking is provided below-grade and all loading and truck turning maneuvers can be accommodated on-site. Moreover, a designed pick-up/drop-off area for building residents and guests is provided within the private drive to prevent vehicles from double-parking on the public streets surrounding the Property.
- vii. Principle 7: Maximize Transparency and Visibility of Ground Floor Uses (Ex. 61A, Sheet 23) – The Project includes a vibrant retail base along M and South Capitol Streets that maximizes transparency and visibility of the ground floor uses along these key commercial corridors. In addition, the corner pavilion has visual porosity to respond to the surrounding corridors and to serve as a gateway into the neighborhood.
- viii. Principle 8: Encourage Connectivity (Ex. 61A, Sheet 24) – The Project encourages connectivity through its well-organized circulation patterns, which include minimal curb cuts, an on-site covered resident pick-up and drop-off area, internal loading, and reconstructed sidewalks with pedestrian amenities including new lighting and bicycle facilities.

96. Lighting. The ANC raised a concern with neon lighting and requested that the Applicant submit a lighting plan and commit to not providing any neon lighting on the Project. The Commission finds that the Applicant addressed this concern by committing to a condition in this Order that prevents the Applicant from installing any neon lighting on the exterior of the Project. The Applicant committed to a lighting plan showing the types and locations of proposed lighting, which includes low path lighting for egress, recessed downlights and wall sconces, and overhead downlights, and which specifically restricts any architectural lighting. (Ex. 32A, 52, and Sheets 132-138 of the Approved Plans at Ex. 61A.) Accordingly, the Applicant will be required to provide lighting consistent with the approved lighting plans, which the Commission finds fully address the ANC's stated concern regarding building lighting.
97. Signage. The ANC raised a concern with digital signage and requested that the Applicant submit a signage plan for the Project and commit to not providing any digital signage on the Project. The Commission finds that the Applicant addressed this concerns by committing to a condition in this Order that prevents the Applicant from installing any digital signage on the exterior of the Project. The Applicant provided a detailed signage plan showing the location and extent of proposed signage, which includes detailed storefront elevations, precedent signage images, and building renderings. (See Sheets 120-127 of the Approved Plans at Ex. 61A.) Accordingly, the Applicant will be required to provide signage consistent with the approved signage plans, which the Commission finds fully address the ANC's stated concern regarding building signage.
98. Heritage Tree. The ANC stated that the Applicant should preserve the existing Heritage Tree abutting the Property. (Ex. 19, p. 3.) However, the Commission agrees with the Applicant's assertion that the heritage tree is located in public space adjacent to the Property and therefore plans for the tree, including the final public space design, landscape and hardscape improvements, and strategies to potentially save the tree, are subject to review and approval by DDOT. Accordingly, the Commission declines to make any condition to approval contingent on any plans regarding the heritage tree

Applicant's Response to ANC Issues and Concerns Related to Affordable Housing Raised in the ANC Letter

99. Throughout its review of the Project overall – at the public hearing and in meetings before and after the hearing – the ANC raised the overarching concern that the Project does not provide enough affordable housing. The ANC's Letter (Ex. 19A) specifically recognized that the "IZ requirements are not part of the Zoning Commission's purview with respect to design review" but stated that the Applicant "ought to" provide affordable housing even though it is not required. (Ex. 19A, p. 1.) However, the Commission makes the following findings as it relates to the Applicant's commitment to affordable housing and the Project's compliance with the IZ regulations:
- a. The Applicant will provide one required IZ unit on-site, as shown on Sheet 72 of the Approved Plans (Ex. 61A) and therefore meets the IZ requirement applicable to the Project. In addition, the Applicant agreed to provide 19 Non-IZ Affordable Units at 60% of the MFI for the life of the Project, which will also meet the

following development standards that are applicable to required IZ units: (i) the proportion of studio and one-bedroom Non-IZ Affordable Units will not exceed the proportion of studio and one-bedroom market rate units; (ii) the Non-IZ Affordable Units will have comparable exterior design, materials and finishes to the market rate units; (iii) the Non-IZ Affordable Units will have comparable interior amenities such as finishes and appliances as the market rate units; (iv) the Non-IZ Affordable Units will not be overly concentrated on any floor of the Project; and (v) the Non-IZ Affordable Units will not be located in cellar space.

- b. Accordingly, the Commission finds that the Applicant is providing affordable housing well beyond the minimum required by IZ (one unit required; 20 units provided). However, the provision of affordable housing beyond the amount required by IZ is outside of the Commission's purview in this Design Review case, which is limited to the standards set forth in Subtitle I § 616, Subtitle I, Chapter 7, and Subtitle X § 901.2.
- c. Moreover, as set forth in the Applicant's Initial Post-Hearing Submission, the Applicant development company is deeply committed the Mayor's Housing Initiative, and although the Project does not provide a large percentage of affordable units, the Project is fully compliant with the applicable IZ regulations and the Applicant has presented a compelling case as to how it is otherwise advancing the production and preservation of housing and affordable housing throughout the District and surrounding region. (Ex. 60B.)

#### Applicant's Responses to ANC Issues and Concerns Raised in the ANC Supplemental Resolution

100. Setbacks and Tiering. As stated in FF No. 69, the ANC stated that the Project should provide additional tiering along M Street as it moves towards the Southwest neighborhood. *See also* Ex. 54, p. 1 and testimony at the public hearing.
- a. The Commission finds that the Applicant established significant tiering of the Project as it moves from South Capitol Street towards the Southwest neighborhood. While the ANC stated that they would like to see the tiering occur in the opposite direction (i.e. lower heights along South Capitol that step up as the building moves west), the Commission agrees with the Applicant that preserving South Capitol Street's 130-foot tall streetwall and stepping down into the neighborhood is fully consistent with the goals of the Zoning Regulations, the SW Plan, and the Comprehensive Plan, and it better respects the lower-density residential neighborhood to the south and west. (Ex. 61.)
  - b. The Commission acknowledges the objectives of the M and South Capitol Street Sub-Area, which specifically call for the preservation of views towards the Capitol and development of a "high density mixed use corridor" along South Capitol street. *See* 11-I DCMR § 616.1. *See also* 11-I DCMR § 616.7(g) requiring minimum streetwall requirements on the west side of South Capitol Street, and the Comprehensive Plan and SW Plan which identify the Property for high density development. Accordingly, the Applicant placed the Project's greatest height and

density along the South Capitol Street frontage to establish the required streetwall and frame the corridor, which the Commission finds is a consistent design move to reflect the goals of the Sub-Area, Comprehensive Plan, and SW Plan.

- c. More specifically, the Commission finds that the building tiers down significantly as it moves west, starting at 130 feet at South Capitol, to 110 feet for the South Tower's M Street frontage, and down to 80 feet at the top of the pavilion. The ten-foot setback at 110 feet wraps the building from South Capitol Street to M Street, and an additional six-foot setback is provided at levels 10-11 facing M and South Capitol Streets, which has the effect of lowering the perceived height of the building and creating an inherent cornice. Additional setbacks comprised of framed outdoor terraces at levels 12-13 along M Street facing the pavilion are also provided, thus creating additional tiering along M Street as the building moves west towards the Southwest neighborhood. The pavilion itself also includes inset terraces to provide a further tiered element at the corner of M and Half Streets.
  - d. The Commission also credits the Applicant's work to carve away the massing along both M and South Capitol Streets as it worked with the ANC, specifically eroding the building's southeast corner by removing interior space and holding the architecture together with only the framing of structural columns. At this corner, the Applicant created large outdoor terraces, added inset balconies, and established an open re-entrant corner at the ground level. These are in addition to the 1:1 setback at 110 feet, the six-foot setbacks at levels 10-11, and the three-foot setback along the South Tower's M Street frontage at the ground floor. These cut-outs allow the Project to continue to respect the streetwall while creating a light and airy open expression that was specifically requested by the ANC.
  - e. Accordingly, the Commission finds that the Applicant balanced the ANC's request for additional tiering with the stated urban design goals for this high density site. Any further tiering of the M Street façade will have ripple effects in the building, which would adversely impact the unit layouts, penthouse location, and the amenities at the roof level, which the Applicant stated the Project could not support. The Commission finds that the tiering as proposed emphasizes the importance of the Property as a gateway into Southwest, recognizes the mix of heights and densities in Southwest, and meets the urban design goals for this high density site as set forth in the Zoning Regulations, the Comprehensive Plan, and the SW Plan.
101. Exoskeleton. In the ANC Supplemental Resolution, at the public hearing, and in subsequent meetings with the Applicant, the ANC stated that the Project should have a prominent "exoskeleton" such that the exterior skin would be recessed behind the primary façade structure. The ANC also expressed concerns that the building appeared heavy.
- a. While the Applicant did not recess the building behind an exoskeleton across the entire façade, it did provide recessed windows at the corners and converted all of the balconies on the South Tower to traditional inset balconies, which had the same effect of pulling the windows inward behind an exoskeleton. The Commission agrees with the Applicant's assertion that applying an exoskeleton for the entire



building could have the effect of increasing shadows and making the building feel darker and heavier, and therefore finds that the Applicant's use of corner recessed windows and inset balconies adequately addresses the ANC's request to provide an exoskeleton without creating adverse effects.

102. Parking Operation. The ANC Supplemental Resolution stated that the Applicant should be restricted from operating or leasing out any portion of the parking garage to any parking company to serve anything other than tenants within the building. (Ex. 54, p. 2.) In response, the Applicant's TDM plan included a condition that it would not lease unused parking spaces to anyone other than tenants of the building. This condition has been included in this Order and therefore addresses the ANC's stated concern regarding use of the on-site parking garage.
103. Extension of L Street Façade. The ANC Supplemental Resolution raised concerns with the Applicant's proposal to extend the east façade of the North Tower over the private drive due to concerns with at-risk windows and establishing a condition where the parking and loading entrance would be located directly below residential units. (Ex. 54, p. 2.)
  - a. The Commission finds that constructing residential units over driveway access is compliant with the Zoning Regulations, is seen in projects throughout the District, and will not create adverse effects of residents of the Project or of the future development on Lot 47. The Applicant provided evidence that the building's extension over the private drive would have no adverse impact on the operation of the private driveway for Project or for future development on Lot 47. The north-south segment of the private drive will have a vertical clearance of no less than 18 feet and a clear width along the property line at Lot 47 of no less than 22 feet. The east-west segment of the private drive will have a vertical clearance of no less than 14.5 feet and a clear width of no less than 20 feet. Accordingly, the lowest clearance in any portion of the private driveway will be 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, the Commission finds that there will be more than sufficient clearance for all potential trucks to access the private driveway. (Ex. 61.)
  - b. Moreover, there is no required setback from the Property's east lot line abutting Lot 47, such that the building's extension over the private drive is fully compliant with the Zoning Regulations. The building extension will be supported by columns along the east property line, which are 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 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. (Ex. 52 and 61.)
104. Affordable Housing. The ANC Supplemental Resolution reiterated the ANC's previously stated concerns with the Project's affordable housing. The Commission addressed these concerns in FF No. 99 of this Order.

## Applicant's Responses to ANC Issues and Concerns Raised After the Public Hearing

105. Design Consistency/Cohesiveness. At the public hearing and in subsequent meetings with the Applicant, the ANC asserted that the Project was too “busy” and lacked continuity between the various building components, including critiques that the pavilion should be more consistent with the design and materiality of the North and South Towers.
- a. In response to comments from the ANC regarding Project continuity, the Applicant made specific design moves to create a more consistent design aesthetic while still maintaining the separate building components. For example, the Applicant incorporated a setback at levels 12 and 13 of the North Tower facing Half Street that wraps around to the portion of the façade facing the pavilion, and applied the pavilion façade type across the full extent of this setback for additional consistency. At this corner where the North Tower meets the pavilion, the Applicant also added outdoor balconies that match the design motif and proportions of the framed terraces and windows applied to the South Tower where it faces the pavilion. These upper level setbacks together create a consistent framing of the pavilion and a constant height and cornice level at the floor slab of level 12, thus creating the same geometry as the two towers meet the pavilion in the middle.
  - b. To further enhance the symmetry of the two towers flanking the pavilion, and thus simplify and unify the building design, the Applicant also reduced the width of the setback portion of the pavilion along M Street (as it meets the South Tower) and along Half Street (as it meets the North Tower). These narrower reveals create a proportional scale and simplified composition between the pavilion and the towers on either side and also have the benefit of creating additional amenity and green space on the 9<sup>th</sup> floor terrace. Adjacent to the narrowed reveal along M Street, the Applicant revised the width of the South Tower as it extends south towards M Street past the pavilion. As a result, both Towers meet the pavilion with the same grid and window size for their entire height to create matching proportions on either side of the pavilion.
  - c. In order to further tie the design of the pavilion into the design of the North and South Towers, the Applicant added terraces at the southwest corner with a wood material on the underside that matches the wood material on the third floor reveal, terraces, and inset balconies. The Applicant scaled the terraces' size and design so that they match the framed terraces on the South Tower facing the pavilion. This modification also resulted in five additional balconies for residential units within the pavilion, which the ANC had also requested.
  - d. The Applicant also replaced all hopper windows and balconies with traditional inset windows and balconies to simplify the design and pull the façade farther from the street frontages. On the South Tower, the Applicant added more balconies and repositioned them to simplify the balcony pattern and reduce the appearance of a busy façade. Specifically, the Applicant replaced the two-balcony groupings with four-balcony groupings to create a more streamlined and rationalized composition.

- e. Taken together, the Commission finds that the Applicant’s design modifications made in response to feedback from the ANC to simplify the design reduce the number of unique moves and architectural characteristics found in earlier iterations of the Project and create a coherent and unified building design. More specifically, the Commission finds that the revised setbacks of the Towers on either side of the pavilion are proportional, appropriately step down as they meet the pavilion, and have a consistent height and cornice line on either side of the pavilion to create symmetry and uniformity in the location where the three Project components come together.
106. Hopper-Style Windows/Balconies. The Project originally included a series of hopper-style windows and balconies on the M and South Capitol Street frontages of the South Tower. The ANC consistently voiced a distaste for the hopper-styled components.
- a. The Applicant eliminated all hopper-style windows and balconies in the Project. On the lower floors of the Project the Applicant replaced the tilted hopper windows and balconies with traditional inset balconies, which had the effect of extending the interlocking corner language throughout the body of the North Tower. The Applicant also replaced the previously-proposed two-balcony groupings with four-balcony groupings to create a more streamlined and rationalized composition.
  - b. On the upper-most levels, the Applicant replaced the hopper windows and adjacent balconies with traditional inset windows and balconies to simplify the design and pull the façade farther back from the street frontages. This revision allowed the Applicant to pull the building back by six feet at levels 10-11, which created additional tiering.
  - c. Accordingly, the Commission finds that the Applicant fully responded to the ANC’s concern with the hopper-style design by eliminating them from the Project altogether.
107. Balconies. The ANC consistently requested more balconies to create additional outdoor space for building residents. At the public hearing, the ANC also stated that they did not like the balcony design for the North Tower, which appeared too heavy and disconnected from the overall design aesthetic.
- a. The Commission finds that the Applicant added a significant number of balconies to the Project following the public hearing. Specifically, the Applicant increased the number of balconies from 89 individual balconies plus 488 linear feet of connected balconies at the November 12, 2020 public hearing, to 94 individual balconies plus 641 linear feet of connected balconies at the ANC’s December 14, 2020 public meeting, to 132 individual balconies plus 641 linear feet of connected balconies as shown in the Approved Plans. (Ex. 61 and 61A.) Accordingly, the Commission finds that the Applicant fully addressed the ANC’s concern that the Project provided an insufficient number of balconies, and that the final design shown on the Approved Plans provide a significant amount of outdoor space for building residents.

- b. On the North Tower specifically, the Applicant addressed the ANC's concern with the balcony design by replacing the previously-proposed angled hanging detail supporting the balconies with a simple cantilever, which also had the effect of making the building appear lighter. The Applicant applied the same channel detail to the revised balconies that is present throughout the Project, thus creating additional consistency in design vocabulary across the various building components. (Ex. 60, p. 3.) Thus, the Commission finds that the Applicant revised the balcony on the North Tower in response to the ANC's feedback.
108. Building Materials. The ANC expressed concern with the building materials, asserting that the use of brick on the South Tower does not reflect Southwest design principles and should be converted to concrete.
- a. Following the public hearing the Applicant replaced the brick masonry of the South Tower with a concrete material palette, thus fully addressing the ANC's stated concern. The Applicant also provided information on how it would maintain the light colored brick so that it would remain clean over time. (Ex. 61.)
109. Delivery Vehicles. The ANC expressed a concern that loading trucks for the proposed retailers would double-park on the adjacent public streets rather than use the interior loading facilities, and that the Project should include loading berths that can accommodate 55-foot trucks.
- a. The Project's on-site loading facilities and private drive have been designed to accommodate WB-67 trucks (which is the largest size truck permitted in the District) and head-in/head-out on-site loading maneuvers to fully internalize all loading activities. The Applicant also agreed to a condition, which has been incorporated into this Order, which requires the Applicant to include language in all commercial leases that requires retailers to use the on-site loading facilities within the Property for all pick-up and drop-off loading activities. Accordingly, the Commission finds that the Applicant has addressed the ANC's concern regarding loading deliveries and the use and size of the on-site loading facilities.
110. Retailers. The ANC requested that the Applicant include a condition in the final zoning order that it would work with ANC 6D to identify the retailer(s) and work together on a CTR based on the selected retailer(s).
- a. In response to these requests, the Applicant stated that it would be evaluating market conditions for the retail component of the Project closer to the time of Project delivery, and that to the extent the ANC requests updates on the Applicant's marketing and leasing efforts, that it would provide updates following the subject design review process. Given that retail marketing and selection of retail tenants is outside of the Commission's authority in evaluating the Project for consistency with the Design Review standards, the Commission has not imposed a condition related to tenant selection.

- b. The CTR submitted in this case and reviewed by DDOT took a conservative approach with respect to the final retail tenant by assuming that a small format grocer would be one of the tenants, which is the most intense possible retail tenant. *See* Exhibit 12A. In doing so, the CTR found that the Project would not have a detrimental impact on the transportation network and included a traffic impact analysis that was fully vetted by DDOT. *See* DDOT Report (Ex. 15, p. 5), stating that the Applicant and DDOT coordinated on an agreed-upon scope for the CTR that was consistent with the scale of the action, and that accordingly a separate evaluation is not needed following the final selection of the retail tenant. Moreover, the Applicant agreed to report to DDOT within one year of the certificate of occupancy for the Project that it is in compliance with the TDM measures that DDOT requested, and agreed to report back periodically thereafter, and these commitments have been included as conditions in this Order. Accordingly, the Commission finds that the Applicant fully evaluated the traffic and loading impacts of the most intense possible retail tenant and that a separate review is not necessary.
111. Retail Signage and Lighting Impacts. The ANC stated a concern that the retailer in the pavilion could have illumination that would shine into the windows of the sanitary homes across the street.
- a. As stated in FF Nos. 96-97, the Applicant submitted detailed lighting and signage plans and committed to a restriction in this Order that prevents the Applicant from installing any neon lighting or digital signage on the exterior of the Project. Moreover, the sanitary row homes are located more than 100 feet across M Street from the Project and do not have any windows that face north towards the Project. *See* Applicant's Final Post-Hearing Submission (Ex. 61) showing images of the north-facing facades of the closest sanitary homes facing the project along M Street, which do not have any windows. Accordingly, the Commission finds that the Project's lighting and signage, including any light emitted from the M Street retail, will have any negative effects on the sanitary row homes to the south.

#### Applicant's Responses to ANC Issues and Concerns Raised in the Post-Hearing ANC Report

112. Gateway Design. For the reasons set forth in FF No. 93, the Commission finds that the Applicant has demonstrated that the Project appropriately embodies and respects its important gateway location.
113. Southwest Architectural Context. For the reasons set forth in FF. No. 93, the Commission finds that the Applicant demonstrated that the final design of the Project is consistent with the architectural character of the surrounding Southwest neighborhood and fits within its context.
114. Tiering. For the reasons set forth in FF. No. 99, the Commission finds that the Applicant appropriately balanced the ANC's request for additional tiering with the stated urban design goals for the high density site.

115. Balconies. For the reasons set forth in FF. Nos. 105-106, the Commission finds that the Applicant added a significant number of new balconies and revised the balcony design and configuration on both Towers in response to ongoing feedback from the ANC. Specifically, the Applicant increased (not decreased, as suggested by the ANC) the number of units on the south façade with balconies from 17 presented at the public hearing to 31 shown in the Approved Plans. Accordingly, the Commission finds that the Project provides a sufficient number of balconies to provide ample outdoor space for building residents and create a residential character to the Project.
116. Design Consistency/Cohesiveness. For the reasons set forth in FF. No. 104, the Commission finds that the Applicant undertook a number of specific design revisions which result in an overall Project design that is coherent, unified, and reflects the character of the residential and retail uses within the building.
117. Affordable Housing. For the reasons set forth in FF. No. 98, the Commission finds that the Project includes affordable housing well beyond the minimum required by IZ, that the provision of affordable housing beyond the amount required by IZ is outside of the Commission’s purview in this Design Review case, and that the Applicant is otherwise committed to providing affordable housing in projects within the Washington, DC region.

#### Opposition Contested Issue on Gentrification and Displacement

118. The Opposition claimed that the Project would result in gentrification and displacement of Southwest residents. In reviewing the Opposition’s written and oral testimony on this issue, and for the reasons stated below, the Commission finds that the Opposition has approached the issue of affordable housing in the District extremely narrowly by applying a one size fits all solution to an issue that requires a range of strategies and programs spanning several District agencies that focus on, among other things, preserving existing affordable housing and controlling housing costs for existing residents through “non-zoning related” programs that provide rental assistance and limit assessment value increases. The Commission agrees with the Applicant’s assertions that increasing market rate and affordable housing supply is yet another strategy proven to be effective at addressing the issue of affordable housing, and that the Project will be greatly beneficial in this regard by adding approximately 615 new units of housing, of which 20 units will be set aside as affordable at 50% and 60% of MFI.
119. Contrary to the Opposition’s claim that the Project will harm the area’s existing affordability, the Commission credits analysis conducted by the District and submitted by the Applicant, which has shown that increases in housing (both market rate and affordable) have not impacted lower income residents. Specifically, according to a report entitled “*Bridges to Opportunity, A New Housing Strategy for D.C.*” (March 2013), prepared by the 2013 Comprehensive Housing Strategy Task Force, “the recent increase in market rate housing does not appear to have led to significant gentrification, by which we mean the displacement of lower income residents. In fact, over the past two years of the city’s population growth, the number of people filing income taxes has increased across all income levels citywide. Market rate housing starts are essential to improving the city’s

continuum of housing as are public-private investments in affordable housing development.” See *Bridges to Opportunity*, pp. 7 and 41. (Ex. 61.)

120. More recently, in 2020 the District Office of the Chief Financial Officer published a report entitled “*The Impact of an Increasing Housing Supply on Housing Prices*,” which concluded that without housing growth, rents would be more than 5% higher than current rents in the District, and if housing is not increased as planned by the Mayor for 36,000 new units, rents will go even higher. (Ex. 61.) In addition, a 2017 study prepared for the McMillan Redevelopment by Robert Charles Lesser & Co. (“RCLCO”) similarly found that “[a]cademic studies and articles from a wide range of political perspectives are increasingly finding that addition of new housing of all types and price ranges is one of the key steps that can be taken to mitigate rising housing prices and rents.” See RCLCO Study at Z.C. Case No. 13-14, Ex. 896G. (Ex. 61.) Accordingly, the Commission finds that there is substantial evidence that increasing the supply of all types of housing, including both market rate and affordable housing, will help all income levels and slow the increase to housing prices throughout the District.
121. The Commission also credits the Applicant’s summary of its efforts to achieve the goals set forth in the Mayor’s Housing Initiative, including the production of 36,000 market rate units and 12,000 affordable units and the preservation of approximately 4,700 existing affordable units. (Ex. 60B.) The Commission agrees that development of the Project targets the Mayor’s first initiative in delivering new market rate units, in addition to the 20 affordable units that will be provided on site, which is an integral component of the Mayor’s Housing Initiative. As described in Ex. 60B, the Commission finds that the Applicant is committed to producing and preserving affordable housing throughout the region through its Washington Housing Initiative (“WHI”), which focuses on the delivery of affordable housing at sites that have access to the many tools identified in the *Housing Equity Report: Creating Goals for Areas of Our City*, prepared and published by the Department of Housing and Community Development in October, 2019, including tax credits/bond financing and land use incentives such as increased density, among others. (Ex. 61.) Furthermore, the proposed residential development does not result in any displacement of current residents. The Property is largely vacant and is only improved with a small retail store.
122. Accordingly, based on the foregoing Findings of Fact and the Applicant’s submissions to the case record, and contrary to the Opposition’s claims, the Commission concludes that the Project will have positive impacts on affordable housing in the District through the significant number of new residential dwelling units that will be constructed at the Property, including the affordable dwelling units that are not required under the Zoning Regulations, and will not result in displacement of any existing residential units. To that end, the Project will not cause or exacerbate gentrification or displacement of existing residents in the surrounding area, and will instead help to mitigate the negative effects of gentrification and increased housing costs throughout the District.

## **CONCLUSIONS OF LAW**

1. Section 8 of the Zoning Act of 1938 authorizes the Commission to review and approve the Application. (D.C. Official Code § 6-641.01 (2019 Repl.).)
2. The Commission concludes that the Application has satisfied the applicable Design Review standards for the M and South Capitol Street Sub-Area of Subtitle I § 616, which require the Application also meet the general design review criteria of Subtitle I, Chapter 7 and the special exception standards of Subtitle X § 901.2, as detailed below.

### **M and South Capitol Streets Sub-Area Design Review Criteria (Subtitle I § 616)**

3. The only design-related standards for the M and South Capitol Streets Sub-Area that are applicable to the Property are those listed in Subtitle I § 616.7(d), (e) and (g). The Commission concludes that the Project satisfies the applicable standards of Subtitle I § 616 as follows:

*Subtitle I § 616.7(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;*

4. The Project provides a 1:1 setback from the building line along South Capitol Street above 110 feet in height.

*Subtitle I § 616.7(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*

5. There are no openings in the building adjacent to South Capitol Street that provide entrances or exits for parking or loading. All parking and loading access points have been consolidated by virtue of the private driveway which is accessed from L and Half Streets, SW.

*Subtitle I § 616.7(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.*

6. A minimum of 60% of the building's street-wall is constructed on the setback line, which for the Property is the eastern property line along South Capitol Street. *See* Subtitle I § 616.7(a). Specifically, a minimum of approximately 66% of the streetwall is constructed on the setback line.
7. Accordingly, the Commission concludes that the Project satisfies all of the standards for the M and South Capitol Streets Sub-Area that are applicable to the Property

### **General Design Review Criteria for D Zones (Subtitle I, Chapter 7)**

8. 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 comply with the stated standards.” The Commission concludes that the Project satisfies the standards of Subtitle I Chapter 7 as follows:

*Subtitle I § 701.2(a)(1) - Help achieve the objectives of the sub-area, as set forth in Subtitle I, Chapter 6, in which it is located;*

9. 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. *See* Subtitle I § 616.1. 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 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.

*Subtitle I § 701.2(a)(2) - Be in context with the surrounding neighborhood and street patterns;*

10. 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 massing, a consistent reveal above, 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 concrete grid that reflects more recent design aesthetics in the Southwest neighborhood.

*Subtitle I § 701.2(a)(3) - Minimize conflict between vehicles and pedestrians;*

11. 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 head-in and head-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.

*Subtitle I § 701.2(a)(4) - Minimize unarticulated blank walls adjacent to public spaces through facade articulation; and*

12. The Project minimizes 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, outdoor courts, terraces, and balconies 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.

*Subtitle I § 701.2(a)(5) - Minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards.*

13. 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 a minimum of 1,000 square feet of solar panels.
14. Accordingly, the Commission concludes that the Project satisfies the general Design Review requirements for D Zones set forth in 11-I DCMR Chapter 7.

**Special Exception Standards (11-X DCMR § 901.2)**

15. Pursuant to Subtitle I § 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 Subtitle X, Chapter 9. For the reasons set forth below, the Commission concludes that the Project satisfies the general special exception criteria of Subtitle X, Chapter 9 as follows:

- a. *Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*

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. The Project is 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 Street as a vibrant, high-density and mixed-use corridor.

- b. *Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and*

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 Project is also fully consistent with the development standards of the D-5 zone and with all applicable design criteria of the M and South Capitol Street Sub-Area. The proposed residential use is consistent with uses in the surrounding area, and the proposed ground floor retail will help to enhance South Capitol and M Streets as vibrant, walkable, and pedestrian-friendly urban boulevards. In addition, the centralized vehicular access for parking, loading, and pick-up/drop-offs will minimize any potential conflicts between pedestrians and vehicles, and the Applicant's TDM measures will ensure that new vehicular trips generated by the Project will not result in any adverse effects.

The ANC raised a number of issues related to the design and operation of the Project, to which the Applicant responded in its written submissions to the case record and at the public hearing. As set forth in FF Nos. 92-117 of this Order, the Commission has considered each of the ANC's concerns and has found that the Applicant's responses thereto and creative design solutions have resulted in a final design that is not only consistent with the applicable standards in the Zoning Regulations, but which will result in a major benefit to the Southwest neighborhood and the District as a whole without creating any unmitigated impacts.

With respect to claims raised by the Opposition Party that the Project would result in adverse effects on access to future development on Lot 47, the Commission finds that the Applicant worked successfully with the Lot 47 Owner to establish specific internal loading dock and column locations to ensure head-in and head-out loading and effective sharing of the north-south private driveway for both properties, regardless of construction sequencing. Therefore, the Commission concludes that development of the Property as proposed will not result in any adverse effects on the use of Lot 47.

With respect to claims raised by the ANC and Opposition that the Project would result in adverse effects on the use of neighboring property due to the lack of affordable housing in amounts that meet or exceed the IZ requirements, the Commission finds that the Project is fully compliant with the IZ requirements, which require one IZ unit generated by the proposed penthouse habitable space, and that this requirement could have alternatively been satisfied through a contribution to the HPTF. The Applicant's commitment to providing 19 Non-IZ Affordable Units at 60% of the MFI for the life of the Project far exceeds any standards applicable to the Project under the Zoning Regulations. This 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 Nos. 16-06 and 17-25) nor has it 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) and accordingly declines to do so in the present case.

The Opposition also submitted testimony and materials that the Project would result in gentrification and displacement of residents in the Southwest neighborhood. Based on the findings set forth in FF Nos. 99 and 118-122 of this Order, the Commission concludes that the significant new housing, including IZ units and Non-IZ Affordable Units, will result in a major benefit to the neighborhood and increase the District's housing supply, which is fully consistent with many recent studies and reports, the Mayor's Housing Initiative, and with the goals set forth in the Comprehensive Plan and SW Plan.

Furthermore, this Commission has consistently determined that in a Design Review case its authority is limited to whether the applicant has met the Design Review standards specific to that property and, if requested, the standards for variance or special exception relief. *See* Z.C. Order No. 16-06. In the present case, the Applicant asked for no relief from the Zoning Regulations, and as set forth in detail in the Applicant's written submissions, the OP Reports, and in Mr. Dettman's testimony at the public hearing, the Commission finds that the Applicant has fully met the burden of the proof under the general special exception criteria; and as such, the special exception "must ordinarily be granted." *See Robey v. Schwab*, 307 F.2d 198, 201; *Hyman v. Coe*, 146 F. Supp. 24, 27, 32 (D.D.C.1956); *see also Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C.1973); *see also First Baptist Church v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695, 698 (D.C.1981); *see also French*, 658 A.2d at 1033 (1995).

- c. *Will meet such special conditions as may be specified in this title.*

As set forth above, the Project complies with all applicable special conditions related to Design Review for properties in the M and South Capitol Streets Sub-Area.

16. Accordingly, the Commission concludes that the Project satisfies the general special exception criteria of Subtitle X, Chapter 9.

### **"Great Weight" to the Recommendations of OP**

17. The Commission must give "great weight" to the recommendation of OP, pursuant to § 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 (2018 Repl)) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016).)
18. OP's support for the Project was based on two conditions related to the establishment of an easement on the north-south portion of the private drive on the Property for the benefit of Lot 47. As noted in the Supplemental OP Report, the Applicant agreed to those conditions.
19. OP also noted that the Applicant offered three additional conditions related to building signage, lighting, and restrictions on RPPs, and confirmed that OP was in support of those conditions as well.

20. Accordingly, the Commission finds OP’s analysis of the Project and recommendation to approve the Application persuasive, concurs in that judgment, and adopts the conditions as stated in the Post-Hearing OP Report.

**“Great Weight” to the Written Report of the ANC**

21. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting 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)) and Subtitle Z § 406.2. To satisfy this 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).)
22. The Commission concludes that the Applicant provided robust responses to each of the ANC’s specific issues and concerns relating to the Project, including its design, massing, tiering, access, materials, gateway presence, consistency with surrounding architecture and development, and other aspects related to the Design Review criteria. The Applicant submitted specific responses to each of the ANC’s stated concerns and also provided detailed descriptions and updated drawings demonstrating all of the updates it made to the building design, including in its Initial Application (Ex. 1-3H), Prehearing Submission (Ex. 13-14E), ANC Response (Ex. 32-32A), Supplemental Prehearing Submission (Ex. 52-52D), Hearing Presentation (Ex. 56A1-A9), Initial Post-Hearing Submission (Ex. 60-60B), Final Post-Hearing Submission (Ex. 61-61B), and through testimony at the public hearing. *See also* FF Nos. 92-117 of this Order.
23. Moreover, the Commission continued the hearing once and provided additional time following the continued hearing before making its decision to provide additional time for the Applicant and the ANC to work together to resolve their specific design-related concerns. The Commission finds that the Applicant made significant changes to the building design, massing, materials, and uses to address the ANC’s stated concerns, and met with the ANC on many occasions to try to resolve any and all outstanding issues. *See, e.g.* Applicant’s Hearing Presentation (Ex. 56A1, pp. 7-8); *see also* FF Nos. 92-117. Accordingly, as it relates to the applicable Design Review criteria, the Commission concludes that the Applicant satisfactorily addressed the ANC’s stated issues and concerns as shown on the final building design detailed in the Approved Plans.
24. With respect to concerns raised by the ANC regarding items outside of the Design Review criteria, and therefore outside of the Commission’s authority in this case, the Commission finds as follows:
  - a. Heritage Tree. The ANC stated that the Applicant should preserve the existing Heritage Tree abutting the Property. (Ex. 19, p. 3.) As confirmed by the Applicant,

the heritage tree is located in public space adjacent to the Property on Half Street, and therefore 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 Commission appreciates that the Applicant has stated that it will work closely with DDOT to determine the best way to maintain and save the tree, but the Commission declines to make any condition to approval contingent on any plans regarding the heritage tree.

- b. RPP Restrictions. The ANC requested that the Applicant include a clause in tenant leases indicating that residents will not be eligible for RPP. As stated in the Supplemental OP Report, the Applicant offered this restriction as a condition to approval, and such restriction is accordingly set forth in the Decision section of this Order.
- c. Loading. The ANC requested that the Applicant include language in all commercial leases that requires retailers to use the on-site loading facilities within the Property for all pick-up and drop-off loading activities. As stated in the Applicant's Final Post-Hearing Submission (Ex. 61) the Applicant agreed to this commitment and it has been included as a condition in this Order.
- d. Affordable Housing. The ANC repeatedly asked the Applicant to increase the number of affordable units within the Project and to increase the subsidy level for such units. Pursuant to Subtitle I § 539.2, residential density in the D-5 zone is not subject to the IZ requirements or bonuses of Subtitle C, Chapter 10, other than IZ generated by the penthouse habitable space. At the same time, 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.

The Commission's authority in the present case is limited to whether the Applicant has met the Design Review and special exception tests required by the Zoning Regulations, and any conditions of approval must be intended to mitigate identified adverse effects related to that review. Because the ANC's request for affordable housing goes beyond the scope of the Commission's review of this Application, the Commission declines to include the Applicant's offer of 19 Non-IZ Affordable Units as conditions to approval of this Order.

### **DECISION**

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia concludes that the Applicant has satisfied its burden of proof and therefore orders **APPROVAL** of the Application for Design Review under Subtitle I §§ 616 and 701, subject to the following conditions, standards, and flexibility:

1. **Project Development.** The Project shall be built in accordance with the architectural plans and elevations dated December 31, 2020, and marked as Exhibit 61A (the “Approved Plans”), subject to the following design flexibility from the Approved Plans:
  - a. **Uses in the Pavilion:** To provide retail and/or residential amenity uses in the flexible space located on the first level of the pavilion at the corner of M and Half Streets comprising approximately 6,317 square feet;
  - b. **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;
  - c. **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;
  - d. **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;
  - e. To locate retail entrances in accordance with the needs of retail tenants and to vary the facades as necessary;
  - f. To vary the types of uses designated as retail use to include the following use categories (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)); (v) Medical Care (11-B DCMR § 200.2(p)); and (vi) Arts, Design, and Creation (11-B DCMR § 200.2(e));
  - g. **Exterior Courtyards and Rooftop:** To vary the configuration and layout of the exterior courtyards and rooftops, including the location and size of the rooftop pool, so long as the courtyards and rooftops continue to function in the manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained;
  - h. **Number of Units:** To provide a range in the approved number of residential dwelling units of plus or minus ten percent (10%), provided that to the extent that additional three-bedroom units are incorporated, to reduce the number of units by up to fifteen percent (15%);
  - i. **Parking Layout:** To make refinements to the approved parking configuration, including layout and number of parking spaces of 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;

- j. **Internal Circulation and Loading:** To make refinements to the private drive internal to the Project, including but not limited to the final dimensions and column spacing, so long as the clear dimension within the private driveway is not less than 22 feet along the shared property line at Lot 47 and 20 feet within the private driveway, to accommodate vehicular access to Lot 47 as the design of that project proceeds, and to modify the loading facilities on the Property so long as they (i) comply with the minimum loading requirements of Subtitle C, Chapter 9, (ii) continue to accommodate head-in and head-out maneuvers, and (iii) accommodate access to the future Lot 47 project as contemplated under the final agreement between the Applicant and the Lot 47 Owner;
  - k. **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;
  - l. **Signage:** To vary the font, message, logo, and color of the approved signage, provided that (i) digital and neon signage shall not be permitted on the exterior of the project; (ii) the maximum overall dimensions and signage materials are consistent with the signage on the plans approved by the order; and (iii) the signage is compliant with the DC signage regulations; and
  - m. **Sustainable Features:** To vary the approved sustainable features of the project, including the location of solar panels, provided the total number of LEED points achievable for the project does not decrease below the minimum required for the LEED standard specified by the order.
2. **Prior to the issuance of a Building Permit for any phase of the Project**, the Applicant shall demonstrate to the Zoning Administrator that (i) it has obtained public space approval for the curb cuts on Half Street, S.W. and L Street, S.W. shown in the Approved Plans; (ii) it has recorded an easement agreement permitting the owner of Lot 47 to share in the use of the private driveway for purposes of ingress and egress to parking, loading and service areas associated with future improvements on Lot 47; and (iii) it has provided a copy of the recorded easement agreement to the District Department of Transportation's Planning & Sustainability Division. The easement agreement shall provide, consistent with the Approved Plans, for a driveway of no less than 22 feet of clear width along the property line shared with Lot 47 and having a minimum vertical clearance of 18 feet. The easement shall further provide that if the Property is developed in a southern Phase A and a northern Phase B as set forth in this order, and Lot 47 is developed prior to the completion of Phase B, then during construction of Phase B, parking and loading access to Lot 47 shall be provided via the curb cut and driveway off of Half Street, S.W., rather than from L Street, S.W., until such time as the construction of Phase B is completed. The temporary east-west easement area shall have a vertical clearance of no less than 14 feet, 6 inches and a clear width of no less than 20 feet, as shown on the Approved Plans. Upon completion of Phase B, the temporary easement shall expire and the permanent easement from L Street, S.W. shall be implemented in accordance with the terms therein.
3. **For the life of the Project**, the Applicant shall:



- a. 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;
  - b. 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;
  - c. 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; and
  - d. Include language in all commercial leases that requires retailers to use the on-site loading facilities within the Property for all pick-up and drop-off loading activities.
4. **TDM Measures. For the life of the Project**, the Applicant shall adhere to the following site-wide TDM measures as set forth in Exhibit 52C:
- a. Unbundle the cost of vehicle parking from the lease or purchase of each residential and retail unit and charge a minimum rate based on the average market rate within a quarter mile of the site. Free parking or discounted rates will not be provided.
  - b. Identify Transportation Coordinators for the planning, construction, and operations phases of the development. There will be a Transportation Coordinator for each retail tenant and the entire residential component/building. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement.
  - c. Will provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year. All retail employer tenants must survey their employees and report back to the Transportation Coordinator.
  - d. Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to the residents and employees, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications.
  - e. Transportation Coordinators will receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan.
  - f. Transportation Coordinator will subscribe to the applicable goDCgo's newsletters.
  - g. Transportation Coordinator will notify goDCgo each time a new retail tenant moves in and provide TDM information to each tenant as they move in.

- h. Transportation Coordinator will provide links to CommuterConnections.com and goDCgo.com on property websites.
- i. Transportation Coordinators will implement a carpooling system such that individuals working in the retail component of the building who wish to carpool can easily locate other employees who live nearby.
- j. Distribute information on the Commuter Connections Guaranteed Ride Home (GRH) program, which provides commuters who regularly carpool, vanpool, bike, walk, or take transit to work with a free and reliable ride home in an emergency.
- k. Provide residents and retail 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.
- l. 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).
- m. Within one year following the issuance of a certificate of occupancy for the project, the Transportation Coordinator shall submit documentation summarizing compliance with the transportation and TDM conditions of the Order to the Zoning Administrator's office to evidence compliance with the TDM conditions.
- n. **Following the issuance of a certificate of occupancy for the Project**, the Transportation Coordinator will coordinate with DDOT and goDCgo every five (5) years (as measured from the final certificate of occupancy for the project) summarizing continued compliance with the transportation and TDM conditions in the Order.
- o. Install a Transportation Information Center Display (electronic screen) within the residential lobby (two total), containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles.
- p. Provide at least 144 long-term and 42 short-term bicycle parking spaces, which exceed the number of spaces required by the Zoning Regulations.
- q. Provide a bicycle repair station in the bicycle parking storage rooms.
- r. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids bikes.
- s. **Prior to the issuance of a final Certificate of Occupancy for the Project**, the Applicant shall fund and install two (2) four-dock Capital Bikeshare expansion

plates at the existing station at M Street and 1st Street SW at a total cost not to exceed \$16,000, subject to DDOT approval.

- t. **Prior to the issuance of the final Certificate of Occupancy for Phase A of the Project**, the Applicant shall fund and construct a curb extension at the northeast corner of M Street and Half Street SW (Half Street only), subject to DDOT approval during public space permitting; and **prior to the issuance of the final Certificate of Occupancy for Phase B of the Project**, the Applicant shall fund and construct curb extensions at (i) the southeast corner of L Street and Half Street SW (both Half Street and L Street, wrapping the corner), and (ii) the southwest corner of L Street and South Capitol Street, SW (L Street side only, which shall be constructed of flexiposts and striping), so long as development on Lot 47 has not commenced.
- u. **Prior to the issuance of a final Certificate of Occupancy for Phase A of the Project**, the Applicant will make a contribution of \$90,000 to the DDOT Transportation Mitigation Fund to be used for installation of a 19-dock Capital Bikeshare station or other pedestrian, bicycle, and transit enhancements within ANC 6D.
- v. Provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing [info@godcgo.com](mailto:info@godcgo.com).
- w. Will meet ZR16 short- and long-term bicycle parking requirements for residential use. Long-term bicycle space will be provided free of charge to residents.
- x. Provide one (1) collapsible shopping cart (utility cart) for every 50 residential units to encourage residents to walk to the grocery shopping and run errands.
- y. The Applicant agrees to offer and promote an annual Capital Bikeshare membership for free to each resident at initial lease up
- z. Will meet ZR16 short- and long-term bicycle parking requirements for retail use. Long-term bicycle parking will be provided free of charge to all employees.
- aa. Provide a free parking space for all vehicles that employees use to vanpool to work; not to exceed one (1) space.
- bb. Coordinate with BID, WMATA, and local ANC on a way finding plan along walking routes to the property from the Navy Yard-Ballpark and Waterfront Metrorail stations.

## 5. **Project Phasing.**

- a. Approval of Phase A shall be valid for a period of two years from the effective date of the Order. Within that time, the Applicant shall file a building permit application

for Phase A. The Applicant shall begin construction of Phase A within three years of the effective date of the Order.

- b. Approval of Phase B shall be valid for a period of two years following issuance of the first Certificate of Occupancy for Phase A. Within that time, the Applicant shall file a building permit application for Phase B. The Applicant shall begin construction of Phase B within three years of issuance of the first Certificate of Occupancy for Phase A.

**VOTE:**

In accordance with the provisions of Subtitle Z § 604.9, this Z.C. Order No. 20-14 shall become final and effective upon publication in *the D.C. Register*, that is on \_\_\_\_\_.