

**BEFORE THE
ZONING COMMISSION
FOR THE DISTRICT OF COLUMBIA**

**Z.C. Case No. 21-12
APPLICATION FOR DESIGN REVIEW
IN THE
M AND SOUTH CAPITOL STREETS SUB-AREA**

**850 South Capitol Street, SE
SQUARE 695, LOTS 31 & 34**

Supplemental Prehearing Statement

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Submitted by:

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I. INTRODUCTION

This supplemental prehearing statement and accompanying exhibits are submitted on behalf of Square 695 LLC (the “Applicant”) in support of Z.C. Case No. 21-12 seeking design review and approval of a residential development project located at 850 South Capitol Street, SE (Square 695, Lots 31 and 34) (the “Subject Property”). The Subject Property is zoned D-5, and is located in the M and South Capitol Streets Sub-Area.

The subject application was submitted on July 30, 2021, pursuant to the design review provisions of Subtitle I, Section 616.8 and Subtitle I, Chapter 7 of the 2016 Zoning Regulations of the District of Columbia (“ZR16”). The Subject Property is subject to design review by the Zoning Commission due to its location within the M and South Capitol Street Sub-Area. *See* 11-I DCMR §§ 616 and 701.¹

The Subject Property, which contains approximately 118,364 square feet of land area, is located within Square 695, which is bounded by Virginia Avenue, SE to the north, New Jersey Avenue, SE to the east, Eye Street, SE to the south, and South Capitol Street to the west. Of the two lots that comprise the Subject Property, Lot 34 is currently vacant and Lot 31 is currently improved with a car wash use. The proposed building is within the boundaries of Advisory Neighborhood Commission (“ANC”) 6D-07. The public hearing on the application is scheduled for December 9, 2021.

This supplemental prehearing statement supplements the Applicant’s prior filings for this case, namely its initial application statement in support filed on July 30, 2021 (Ex. 3), its response to comments by ANC 6D filed on September 30, 2021 (Ex. 12), its Comprehensive Transportation Review (“CTR”) filed on October 8, 2021 (Ex. 13), and its prehearing statement filed on October 19, 2021 (Ex. 15).

II. PROPOSAL

As more thoroughly described in the Applicant’s initial application statement, the project entails the construction of a new residential building containing approximately 520 dwelling units, ground-floor and rooftop amenity space, and approximately 272 vehicle parking spaces (the

¹ The application is not subject to the design review flexibility or standards set forth in 11-X DCMR, Chapter 6. *See* Design Review Applicability at 11-X DCMR § 601.1, stating that “[e]xcept for Subtitle I, this chapter applies to any instance when the Zoning Regulations require Zoning Commission review of any building, structure, or use other than a campus plan” (emphasis added). *See* also Z.C. Order No. 20-14.

“Project”). The Project will contain approximately 725,380 square feet of gross floor area (“GFA”) (approximately 6.13 floor area ratio (“FAR”)), and have a maximum building height of 130 feet, with an upper-level setback at 110 feet fronting South Capitol Street. At the roof level, the Project will contain two, 20-foot penthouse enclosures that contain amenity space and mechanical space. The roof level will also include outdoor terraces and recreation spaces.

III. SUPPLEMENTAL INFORMATION ON THE APPLICATION

Correction to Civil / Green Area Ratio Drawings

The proposed architectural plans and drawings for the Project are contained in the case record at Exhibits 15A1 – 15A3 (the “Drawings”), which were submitted as part of the Applicant’s prehearing statement. The Applicant has not made any design changes to the Drawings since. However, the land area for the Subject Property needs to be corrected on the “Existing Conditions Plan” and “Green Area Ratio (GAR) Plan” on Sheets 46 and 47 of the Drawings, respectively. This was purely a typographical error and did not have any bearing on the GAR landscape elements or compliance of the Project. The corrected civil drawings are attached as Exhibit A to this supplemental prehearing statement, which shall supplant Sheets 46 and 47 of the Drawings found in Exhibit 15A3.

IV. UPDATE ON DDOT PUBLIC SPACE COMMITTEE CURB CUT APPLICATION

On October 28, 2021, the DDOT Public Space Committee (“PSC”) voted unanimously to grant concept approval to the proposed curb cuts for the Project.

As shown in the Drawings and described in the Applicant’s initial application statement (Ex. 3), vehicular access to the Project is proposed along South Capitol Street and Eye Street. Along South Capitol Street, the Applicant is proposing to adjust the location of an existing curb cut to allow right-in / right-out only access. The South Capitol Street access will accommodate

access to the Project's parking garage, all loading activity, and all pick-up and drop-off activity. Along Eye Street, the Applicant is proposing to reuse an existing curb cut for outbound only passenger vehicle circulation. As shown in the Drawings, the Applicant is proposing a single outbound vehicle lane along the narrow (20-foot wide) portion of the Subject Property leading to Eye Street. The Applicant is also proposing dedicated pedestrian and bicycle lanes along the Eye Street access drive. The potential transportation impacts and overall vehicle, bicycle, and pedestrian circulation of the Project is thoroughly analyzed in the Applicant's CTR (Ex. 13).

V. UPDATE ON ANC ENGAGEMENT

As discussed in the initial application statement, the Applicant first discussed the Project with ANC 6D and ANC 6B at their respective meetings on July 12th and 13th prior to filing the application.²

Since filing the application, the Applicant has met with ANC 6D four times. On September 7th, the Applicant attended ANC 6D's executive meeting to discuss the Project, and on September 13th, the Applicant formally presented the Project at ANC 6D's monthly business meeting. At that meeting, ANC 6D provided several comments, but did not take a vote on the Project. On September 30th, the Applicant submitted a thorough response to the ANC's comments, which can be found in the case record at Ex. 12.

On October 12th, the Applicant attended the ANC 6D executive meeting to provide updates on the Project, and to review the submitted responses to the ANC comments provide at the September meeting.

On October 18th, the Applicant attended ANC 6D's monthly business meeting where it again reviewed updates on the Project and responses to prior comments. Following a presentation

² The boundary between ANC 6D and ANC 6B traverses the northern end of the Subject Property, essentially running down the centerline of the I-695 freeway. As such, while the proposed building is entirely located within the boundary of ANC 6D, by definition both ANC 6D and 6B make up the "Affected ANC" for the Project. *See* definition of "Affected Advisory Neighborhood Commission" in 11-B DCMR § 100.2. However, on September 1, 2021, ANC 6B informed the Applicant of its decision to forego formal participation in the design review application, and instead would be deferring to the interest and experience of ANC 6D. Accordingly, the Applicant has continued its engagement with ANC 6D while continuing to serve ANC 6B with all submissions to the case record.

and discussion, ANC 6D voted 6-0-0 to oppose the Project. The following information includes the five (5) specific issues upon which the ANC based its opposition to the Project, followed by the Applicant's response to each issue.

1. The ANC criticized the lack of retail use within the Project.

As part of its initial design and programming of the Project, the Applicant thoroughly considered the potential for retail at the Subject Property. Ultimately, the Applicant concluded that the success of any retail use on the site would be substantially compromised due to the unique access constraints affecting the Subject Property. Retailers consider access and parking to be critical factors to their potential to succeed. Given its narrowness and lack of visibility from South Capitol Street, the Property's Eye Street access would be unable to satisfy any retailer's access requirements. Access along South Capitol Street is equally inadequate given its low visibility and the fact that it is only accessible to northbound traffic. Visibility of this access point is currently obstructed by the I-695 freeway onramp, which is exacerbated by the lengthy and circuitous travel route required to return to northbound South Capitol Street if a driver happens to miss the access point.

The location of the Subject Property is also not conducive to a lively retail environment given its relatively isolated location at the north end of the South Capitol Street corridor, immediately adjacent to the freeway and associated ramps. It is well established that the success of retail depends upon the existence of a critical mass of daytime and/or nighttime patrons. The Subject Property lacks both. Indeed, with the exception of the adjacent residential building to the south, the Subject Property has no other neighboring buildings, residential or otherwise, that would generate the activity necessary to allow retail use to succeed. Further, the psychological barrier of the freeway along with the lack of active development north of the freeway creates a pedestrian dead zone at the north end of the corridor (different than the south end of the corridor near destinations such as Nationals Park, Audi Field, Canal Park, The Yards, and numerous eating and drinking establishments). For all of the above-described reasons, the Applicant believes an entirely residential building is the best development scenario for the Subject Property.

2. The ANC suggested that the Applicant remove the balconies facing the freeway.

The Applicant continues to see value in offering the proposed balconies on the north side of the Project, facing the freeway. As stated in the Applicant's prior response to comments provided by ANC 6D, the Project will offer residents a wide range of unit types and locations that best suit the residents' experience and particular taste, including the 56 units with balconies on Levels 4 through 11 of the north side of the Project. The north-facing balconies proposed by the Applicant are similar to the balconies provided in other recent developments adjacent to the freeway such as the Kiley Apartments (600 4th Street, SW), the Agora at the Collective (800 New Jersey Avenue, SE), and at the Illume Apartments (853 New Jersey Avenue, SE). Conversely, the project has ample opportunity along South Capitol Street and facing the courtyards for residents that prefer a quieter balcony experience. Specifically, the building is designed with 112 balconies along South Capitol Street and 168 balconies facing the courtyards.

At the meeting on October 18th, ANC 6D inquired whether the Applicant has considered enclosing some or all of the balconies that face the freeway. Again, the Applicant fully believes there will be substantial demand for units within the Project that have balconies, including the 56 balcony units facing the freeway, and fully intends to construct the building as proposed. Notwithstanding, to the extent the Commission shares the ANCs interest regarding enclosure of some or all of the balconies along the freeway the Applicant would not object to the Commission granting such flexibility.

3. The ANC commented on the overall size of the Project relative to ingress / egress and orientation to Eye Street.

At the October 18th meeting, ANC 6D asserted that the overall size of the Project precludes the Applicant from reorienting the proposed building to front on Eye Street.

With respect to the Project's orientation, it is physically impossible for the Applicant to reorient the proposed building to front on Eye Street. While it might appear the Applicant has a great deal of frontage on Eye Street given the underutilized U.S. Capitol power plant coal yard to the immediate east, the Applicant does not own the coal yard. Rather, as shown in the Drawings the Subject Property only has 20 feet of frontage on Eye Street.

Notwithstanding the impossibility of orienting the Project toward Eye Street, even if this was possible, the construction of a smaller project that turns its back on South Capitol Street would

be inconsistent with the purposes of the Zoning Regulations, and would be in total misalignment with the stated purpose of the M and South Capitol Street Sub Area, which is “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.” While the Subject Property is not conducive to active ground-floor retail or similar uses, the Project’s orientation toward South Capitol Street will still contribute greatly to the overall vision for the corridor. The building’s primary and secondary entrance lobbies will activate the public realm along north end of the corridor. The large ground-floor building amenity space will provide additional vitality and visual interest to passersby.

While the ANC suggests the Project is oversized, in actuality, the Project density is far below what is permitted for an all residential development in the D-5 zone. Pursuant to 11-I DCMR § 539.1, there is no limit on density for a building that is entirely devoted to residential use. Essentially, a residential building is only limited by the height permitted under the 1910 Height Act, and any applicable zoning requirements for yards and courts. For a non-residential building, the D-5 zone permits a maximum density of 6.5 FAR, without the use of credits. As shown in the Drawings, the Project has a proposed density of approximately 6.13 FAR. Thus, not only is the Project below what could be achieved under the 1910 Height Act, but is even below what could be constructed on the Subject Property for a commercial building.

Finally, the Project is significantly smaller than every recent development along the South Capitol Street corridor that was able to achieve a height of 130 feet. Specifically, a review of zoning orders for eight (8) other developments along the corridor show that densities for these projects range between 7.2 FAR – 10.0 FAR, with the majority between 9.0 FAR – 9.5 FAR. This range is well above the Project’s density of 6.13 FAR. Even if the portion of the Subject Property encumbered by the I-695 freeway and related easements was removed from the land area, the resulting Project density would be approximately 8.09 FAR, which is still well below the majority of comparable developments along the corridor.

4. The ANC suggested that the Applicant reduce the on-street parking provided by the Project.

The Project contains approximately 520 dwelling units and approximately 272 parking spaces, which equates to a parking ratio of approximately 0.5. The Applicant believes the amount of parking proposed is necessary to balance a reasonable percentage of the parking demand anticipated for the Project and the potential impacts to surrounding on-street parking. This is based upon the Applicant's experience and information from recently completed developments near the Subject Property. Further, impacts to on-street parking is consistently of concern to the community, particularly in the southeast / southwest neighborhoods south of the freeway. On-street parking in these areas is strictly regulated due to the many events held at Nationals Park, Audi Field, Arena Stage, and the Wharf. As such, to the extent Project residents are forced to park on neighborhood streets, it is likely they will seek out the few surrounding neighborhood areas where on-street parking is permitted, and taking away parking from existing neighborhood residents that need on-street parking.

In adopting ZR16, the Commission did not prescribe minimum or maximum parking requirements in the Downtown zones. Rather, based upon thorough analysis conducted by the Office of Planning, the Commission decided to let property owners and market forces determine how much parking would be provided in downtown projects. To discourage the provision of too much parking, the Commission adopted a set of excess parking regulations that, if triggered, requires property owners to provide mitigation. The Project does not trigger any excess parking mitigation under the regulations.

5. The ANC requested that the Applicant make additional improvements and provide more programming in the area below the freeway.

As shown in the Drawings, a substantial portion of the Subject Property extends below the I-695 freeway. The Applicant's initial statement in support described the perpetual highway easements that are recorded against this portion of the Subject Property. As part of its vote on opposition to the Project, the ANC stated that the Applicant should be more ambitious with the space below the freeway, and should do more with the space that is available.

While it may appear that the area below the freeway is a prime opportunity to active this space, the fact is there are multiple constraints that severely limit what the Applicant can and is allowed to do with this area. First, as already stated this area is encumbered by perpetual highway

easements that benefit the District for purposes of constructing and maintaining the freeway. The easements prohibit the construction of buildings and structures of any kind without prior consent by DDOT. Second, in discussing the Project with DDOT the Applicant has learned that the freeway is in need of additional structural support that will require the construction of new columns within the easement area. Third, as shown in Exhibit B there are significant topographic constraints in the north and northeast corner of the Subject Property that cannot be disturbed due to potential impacts to existing freeway columns and railroad tracks serving the adjacent coal yard.

As demonstrated in Exhibit B, contrary to the ANC's comments, the Applicant is utilizing the area below the freeway to the extent that it can. Taking into account the multiple constraints and limitations below the freeway, the Applicant is using the remaining available area to provide an efficient pick-up and drop-off area so that visitors, rideshares, and food deliveries do not impact traffic along South Capitol Street. Further, at the suggestion of ANC 6D the Applicant is providing a dog park that will be open to the public. The size of the dog park has been maximized within the grade constraints of the area below the freeway and the desire to maintain visibility from the sidewalk for safety purposes. Additional details of the dog park are included in Exhibit B of this submission, as well as in the Drawings.

VI. REVISION TO APPLICANT'S REQUEST FOR MINOR DESIGN FLEXIBILITY

As part of its initial application, the Applicant requested minor design flexibility that is consistent with what the Commission typically grants in a design review application. This includes the standard flexibility language that allows changes to the "location, attributes, and general design of the approved streetscape, including curb cuts, to comply with the requirements of, and the approval by, the DDOT Public Space Division." During the PSC's review and of the Project's conceptual curb cut design, it occurred to the Applicant that while the above-described improvements below the freeway are not located within public space, they are subject to approval by DDOT by virtue of the aforementioned highway easements. As such, the Applicant needs to revise its request for minor design flexibility to allow changes to the proposed improvements below the freeway, including the dog park, to comply with any requirements imposed by DDOT during its review of these improvements. The Applicant respectfully requests the following additional area of minor design flexibility:

Select Site Improvements: To vary the location, attributes, and general design of the site improvements located on the portion of the Subject Property below the I-695 freeway and within the area of any perpetual highway easements recorded against the Subject Property.

VII. CONCLUSION

The Applicant respectfully submits this supplemental prehearing statement. Together with its initial statement in support and prehearing statement, the Applicant believes that the burden of proof applicable to the proposed design review project under Subtitle I, Section 616.8 and Subtitle I, Chapter 7 of ZR16 has been fully satisfied. As such, the Applicant respectfully requests the Commission to approve the application.