

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 21-12**

Z.C. Case No. 21-12

Square 695, LLC

**(Design Review, M & South Capitol Streets Sub-Area, 850 Capitol Street, SE
@ Square 695, Lots 31 & 34)**

December 9, 2021

Pursuant to notice, at its public hearing on December 9, 2021, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Square 695, LLC (the “Applicant”) requesting the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), Zoning Regulations of 2016, to which all references are made unless otherwise specified) for Lots 31 and 34 in Square 695 (the “Subject Property”) in the D-5 zone to construct a new residential building containing approximately 520 dwelling units, ground floor and rooftop amenity space, and approximately 296 vehicle parking spaces (the “Project”):

- Design review approval pursuant to Subtitle I § 616.8 and Subtitle I, Chapter 7; and
- An area variance pursuant to Subtitle I § 701.3 and Subtitle X § 1000.1 from the requirement that a minimum of 75% of the street-wall on the east side of South Capitol Street shall be constructed on the (15-foot) setback line under Subtitle I § 616.7(f).

The Commission conducted the public hearing in accordance with the Commission’s Rules of Practice and Procedures in Subtitle Z. For the reasons below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. The following were automatically parties to this proceeding pursuant to Subtitle Z § 403.5:
 - The Applicant; and
 - Advisory Neighborhood Commission (“ANC”) 6D and ANC 6B, in which portions of the Subject Property are located and so are “affected ANCs” per Subtitle Z § 101.8.
2. The Commission received no requests for party status.

NOTICE

3. Pursuant to Subtitle Z § 301.6, the Applicant mailed a Notice of Intent to file the Application (Exhibit [“Ex.”] 3H2) to ANC 6D, ANC 6B, and the owners of all property within 200 feet of the Subject Property on June 15, 2021.
4. Pursuant to Subtitle Z § 402, the Office of Zoning (“OZ”) sent notice of the originally scheduled November 8, 2021, virtual public hearing to the following on August 17, 2021 (Ex. 7):
 - the Applicant;
 - ANC 6D;
 - ANC Commissioner 6D07, whose district includes the Subject Property;
 - ANC 6B;
 - ANC Commissioner 6B01, whose district includes the Subject Property;
 - the Office of the ANCs;
 - the Ward 6 Councilmember, whose ward includes the Subject Property;
 - the Office of Planning (“OP”);
 - the Department of Energy and Environment (“DOEE”);
 - the District Department of Transportation (“DDOT”);
 - the Department of Consumer and Regulatory Affairs (“DCRA”)
 - the Office of the Attorney General;
 - the Chair and At-Large Members of the Council of the District of Columbia; and
 - the owners of property within 200 feet of the Subject Property.
5. OZ also published notice of the originally scheduled November 8, 2021, virtual public hearing in the August 27, 2021 *D.C. Register* as well as on the calendar on OZ’s website (Ex. 5).
6. On October 25, 2021, the Applicant submitted a request for a waiver from the requirement under Subtitle I § 701.3 that the requested variance relief be advertised together with the Application. The Commission denied the Applicant’s request (Ex. 16).
7. OZ published notice of the rescheduled December 9, 2021, virtual public hearing in the December 3, 2021 *D.C. Register* as well as on the calendar on OZ’s website (Ex. 17).

SUBJECT PROPERTY

8. The Subject Property consists of approximately 118,364 square feet of land area bounded:
 - to the north – by CSX rail lines;
 - to the east – by the U.S. Capitol coal yard;
 - to the south – by Eye Street, S.E.; and
 - to the west – South Capitol Street.
9. A portion of the Subject Property is improved with a car wash (Lot 31) and the remainder is vacant (Lot 34).

10. The Subject Property is irregularly shaped. The northern portion of the site (approximately 28,000 square feet of land area) is located below the Southeast/Southwest Freeway (the “SE/SW Freeway”) and is encumbered by easements established in the early-1960s that grant the District perpetual rights to “construct, use, maintain, repair and renew” highway infrastructure on or above these areas (Instrument Nos. 1961012287 and 1963025950), rendering this portion of the Subject Property unbuildable.
11. In addition, the site’s direct frontage along South Capitol Street is constrained by the SE/SW Freeway and by Lot 805, a 24-foot wide District-owned property located between the Subject Property and South Capitol Street. Combined, the freeway and Lot 805 limit the Subject Property’s actual frontage on South Capitol Street to approximately 54 feet and 73 feet to the north and south of Lot 805, respectively. However, these portions of the Subject Property are encumbered by easements established in the early-1960s that grant the District perpetual rights to “construct, use, maintain, repair and renew” highway infrastructure on or above these areas (Instrument Nos. 1961012287 and 1963025950).

ZONING

12. The Subject Property is located in the D-5 zone and within the M and South Capitol Streets Sub-Area, which have the following purposes:
 - **D-5 zone** – To promote high-density development of commercial and mixed-uses (Subtitle I § 538.1); and
 - **M and South Capitol Streets Sub Area** – 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).

Subtitle I § 539.2 exempts the Subject Property from the requirements or bonuses of the Inclusionary Zoning (“IZ”) requirements of Subtitle C, Chapter 10, except that penthouse habitable space generates an IZ requirements pursuant to Subtitle C, Chapter 10, and §§ 1500.11-1500.12.

II. THE APPLICATION

THE PROJECT

13. The Application proposed to construct the Project with:
 - 13 stories;
 - a maximum building height of 130 feet;
 - approximately 520 dwelling units;
 - approximately 720,900 square feet of gross floor area, including:
 - Ground-floor and rooftop amenity space;
 - Two, 20-foot penthouse enclosures that contain amenity space and mechanical space;
 - Habitable penthouse space consisting of approximately 18,300 square feet;
 - a 6.09 FAR; and
 - approximately 296 parking spaces on three levels of above-ground parking (Ex. 3, 3D1 – 3D3).

14. The proposed construction of the Project was subsequently updated as part of the Applicant's Prehearing Statement, as follows:
 - approximately 725,380 square feet of gross floor area;
 - a 6.13 FAR;
 - a publicly accessible dog park on a portion of the Subject Property below the SE/SW Freeway; and
 - approximately 272 parking spaces on three levels of aboveground parking (Ex. 15, 15A1 – 15C).
15. The Subject Property is not accessible from any public alleys. To minimize potential vehicular and pedestrian conflicts, vehicle and loading access and egress to the Project is provided via two existing curb cuts along South Capitol Street and Eye Street, which at the time of the public hearing were granted concept approval by the D.C. Department of Transportation ("DDOT"), Public Space Committee ("PSC") on October 28, 2021. The curb cut along South Capitol Street will provide access to a pick-up and drop-off area, parking garage entrance, and loading facilities that are located on the north side of the Project, facing the freeway. The South Capitol Street access will be adjusted slightly from its current location and alignment, and will be designed for right-in and right-out turns only. All loading, visitor pick-up and drop-off, and deliveries will use the South Capitol Street curb cut for both ingress and egress. The proposed Eye Street access will provide one-way, outbound vehicle circulation from the Project's parking garage, as well as separate bicycle and pedestrian lanes (Ex. 15A1).
16. The Project contains multiple pedestrian access points. The primary/main lobby pedestrian entrance will be provided at the northwest corner of the building along South Capitol Street, adjacent to a pick-up and drop-off area and the dog park on the north side of the building. A secondary lobby/pedestrian entrance is proposed at the southern end of the Project's frontage along South Capitol Street. The third pedestrian entrance will be provided on the south side of the Project along the access drive leading to Eye Street (Ex. 15A1).
17. The Project will meet or exceed the required long- and short-term bike parking requirements. To facilitate easy access, the bicycle storage room is directly accessible from the primary and secondary building lobbies, and is located on the first garage level in close proximity to the separate bike lane proposed along the access drive leading to Eye Street. Short-term exterior bike parking will be located along South Capitol Street (Ex. 15A1).
18. The proposed dog park will be located below the freeway to the north of the proposed building, and will provide separate areas to accommodate smaller and larger dogs. The dog park will be fenced and contain canine play equipment, seating, lighting, and trash receptacles, all subject to DDOT approval. The dog park will be regularly maintained by the Applicant, and will be open to the public daily from dawn to midnight (Ex. 15A2).
19. The public streetscape adjacent to the Subject Property will include DDOT-standard paving, with the potential for special paving at the lobby entrances. A variety of pedestrian-scaled streetscape features will be installed, including street trees, bioretention, lighting, benches, bike racks, and trash and recycling receptacles. Due to the Subject Property's

unique access constraints, including the existing freeway ramp along the west, the Applicant will continue to coordinate with DDOT during the public space process to determine the most appropriate streetscape design for South Capitol Street. This includes coordination on an interim streetscape design while the freeway ramp remains, and the final streetscape design when the ramp is removed as part of DDOT's ongoing South Capitol Street reconstruction project.

20. The Project will include several sustainable features including:
- Ground-level bioretention areas along South Capitol Street;
 - Bioretention and green roof areas located in courtyards, on the main building roof, and on the penthouse roof;
 - Small and medium trees and large shrubs planted in courtyards and on the roof where possible;
 - Additional sustainable elements will also be incorporated, including but not limited to high performance windows, efficient hot water distribution, enhanced ventilation, and electric vehicle charging in the garage; and
 - The Project has been designed to achieve LEED Gold under LEED v4 for Multifamily Mid-Rise. (Ex. 15A3).

VARIANCE REQUESTED

21. The Application requested:
- Area variance relief pursuant to Subtitle I § 701.3 and Subtitle X § 1000.1 from the requirement that a minimum of 75% of the street-wall on the east side of South Capitol Street shall be constructed on the (15-foot) setback line under Subtitle I § 616.7(f).

APPLICANT'S SUBMISSIONS

Initial Submission

22. The Applicant submitted the initial Application on July 30, 2021. (Ex. 3 – 3J).

Initial Submission

23. The Applicant submitted a response to ANC 6D dated September 30, 2021 (Ex. 12 – 12D), that included the following information:
- The Applicant's response to comments made by ANC 6D regarding the Project's unit sizes, façade design, exterior lighting, balconies along the freeway, various transportation issues, lack of project amenities, and lack of affordable housing. ANC 6D provided these comments to the Applicant at its public meeting on September 13, 2021.
 - In its response to ANC 6D's comments, the Applicant made the following commitments:
 - (i) no studio units within the Project;
 - (ii) to include a notice of the at-risk windows in the lease for units in the northeast section of the building;
 - (iii) no use of architectural lighting for decorative purposes;

(iv) and provision of a publicly-accessible dog park below the freeway.

Comprehensive Transportation Review

24. The Applicant submitted a Comprehensive Transportation Review dated October 8, 2021 (Ex. 13 – 13A3) (the “CTR”), which concluded the Project would not have a detrimental impact on the surrounding transportation network assuming the proposed site design elements and Transportation Demand Management (“TDM”) measures are implemented, based on the following conclusions:

- No intersections meet DDOT’s delay- or queuing-related thresholds for requiring mitigation;
- Due to the unique access constraints for the overall development, both the South Capitol Street and Eye Street access points are necessary to provide safe and efficient access for vehicles, pedestrians, and bicycles;
- The Eye Street curb cut would provide primary pedestrian and bicycle access for the site via separated pedestrian and bicycle pathways along the 281-foot driveway connection to the proposed building. This will result in safe and efficient access for pedestrians and bicycles to reach the sidewalks and bike lanes along Eye Street. This access point will also provide outbound vehicular access for residents departing the site to the south or east/west;
- The South Capitol Street curb cut will provide right-in/right-out vehicular access, and access for loading and delivery vehicles. It would represent one of very few curb cuts along South Capitol Street in its final condition, and would not meaningfully detract from the planning vision of South Capitol Street as a “grand urban boulevard”;
- The proposed curb cut on South Capitol Street is not expected to significantly impact the operations of the future signalized intersection to the north that is planned as part of DDOT’s South Capitol Street reconstruction project;
- The Project includes approximately 272 on-site parking spaces on three-levels of aboveground parking;
- The Project’s loading facilities satisfy the zoning requirements and will accommodate all loading activity and delivery demand for the residential building within private property, and provide loading circulation that ensures head-in/head-out truck movements are performed from the public roadway network without any detrimental impact to the surrounding transportation network;
- The Project is expected to generate a manageable amount of transit trips, and the existing service can accommodate these new trips because the Subject Property is well-served by transit, including:
 - Two Metrorail stations within a half-mile;
 - Three Metrobus routes and one DC Circulator route; and

- Several planned or proposed transit projects will improve transit access to the Subject Property
- The Project is expected to generate pedestrian trips that can be accommodated by the existing pedestrian facilities; and
- The Project is expected to generate bicycle trips that can be accommodated by the existing bicycle facilities and the Project’s long-term bicycle parking within the building and short-term bicycle parking along South Capitol Street that meet zoning requirements.

Prehearing Submission

25. The Applicant submitted a Prehearing Statement dated October 19, 2021 (Ex. 14 – 15C), which included the following information and materials:
- Updated architectural drawings and descriptions regarding how the Applicant had revised the Project based on questions and feedback provided by ANC 6D and the D.C. Office of Planning (“OP”);
 - A commitment by the Applicant to increase the LEED rating of the Project from Silver to Gold;

Supplemental Prehearing Submission

26. The Applicant submitted a Supplemental Prehearing Statement dated November 19, 2021 (Ex. 20 – 20B), which included the following information and materials:
- Corrections to select civil drawings and green area ratio plan;
 - An update on DDOT PSC concept approval of the Project’s curb cuts on South Capitol Street and Eye Street;
 - An update on the Applicant’s continued engagement with ANC 6D and the Applicant’s specific responses to the five specific upon which ANC 6D based its opposition to the Project; and
 - A revision to the Applicant’s request for minor design flexibility to include flexibility to vary the site improvements located below the I-695 freeway to comply with any requirements imposed by DDOT during its review of these improvements.

APPLICANT’S JUSTIFICATION FOR DESIGN REVIEW APPROVAL

M and South Capitol Street Sub-Area Criteria (Subtitle I § 616.7)

27. The Application asserted that the Project complies with the setback requirement under Subtitle I § 616.7(d) because the Project provides a 1:1 setback from the building line along South Capitol Street above 110 feet in height.
28. The Application asserted that the Project it complies with the building opening requirement under Subtitle I § 616.7(e) because the Project does not propose any openings in building

frontages along South Capitol Street that provide entrances or exits for vehicular parking or loading.

29. The Application requested area variance relief pursuant to Subtitle I § 701.3 from the street wall requirement under Subtitle I § 616.7(g)

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

30. The Application asserted that the Project complies with the criteria of Subtitle I § 701.2(a) and (b), as follows:

- Subtitle I § 701.2(a)(1) - the Project preserves the important view of the Capitol Dome by strengthening the street-wall definition along South Capitol Street through the redevelopment of a largely vacant site with a new, high-density, dynamically-designed residential building that will be set back at least 15 feet from South Capitol Street and will provide additional upper-level setbacks above 110 feet. The Project design also advances South Capitol Street as a vibrant, high-density, mixed-use corridor through the provision of new residential use, activated podium-level with large ground-floor window openings, use of high-quality materials, and significant streetscape improvements that will encourage activity, improve safety, and enhance the pedestrian experience along South Capitol Street.
- Subtitle I § 701.2(a)(2) - the Project will be context with the surrounding neighborhood through its distinctive façade design and active ground floor lobbies and amenity space. The massing, articulation, and materials of the Project respond to the context along South Capitol Street and other nearby developments. The Project's building program and access and circulation plan are responsive to the surrounding street pattern, and the unique access constraints that affect the Subject Property.
- Subtitle I § 701.2(a)(3) – the Project will minimize conflict between vehicles and pedestrians because parking and loading facilities will all be provided internal to the Project. Due to the lack of public alleys, access to and from these facilities will be provided via existing curb cuts along South Capitol Street and Eye Street. The South Capitol Street access will be right-in and right-out only to facilitate traffic flow and minimize pedestrian conflicts. The Eye Street access is restricted to outbound-only vehicle circulation and will also contain separated pedestrian and bicycle lanes.
- Subtitle I § 701.2(a)(4) – the Project minimizes unarticulated blank walls adjacent to public spaces by employing a number of design elements that increase visual interest and provide façade articulation including large ground floor windows, horizontal and vertical stepping of the façade, upper floor setbacks, and high-quality materials.
- Subtitle I § 701.2(a)(5) – the Project minimizes impact on the environment as it includes a number of sustainable features including green roofs, high performance building systems. The Project has been designed to achieve LEED Gold under LEED v4 for Multifamily Mid-Rise.

- Subtitle I §701.2(b)(1) - the Project massing and materials advance the establishment of South Capitol Street as a monumental civic boulevard by replacing a largely vacant site with a well-defined street wall that aligns with the building to the south and provides the requisite upper level setbacks above 110 feet. The general volume of the proposed building establishes an urban design consistency along the corridor, while façade articulation and materials give the Project a unique character that is responsive to the surrounding context.
- Subtitle I § 701.2(b)(2) – the height and massing of the Project is compatible other high-density residential, commercial, and mixed-use developments along the South Capitol Street corridor and to the east of the Subject Property. Further, the Project’s access to parking and loading is located in a manner that will minimize pedestrian and vehicle conflicts. The South Capitol Street vehicle entrance reuses an existing curb cut, which the Applicant has received conceptual approval for from the PSC. Rather than overburden the narrow access on Eye Street, use of the South Capitol Street entrance for loading, parking access, and pick-up and drop-off will facilitate safer, more efficient circulation in and out of the Subject Property.
- Subtitle I § 701.2(b)(3) – The Project will strengthen the eastern edge of the view corridor toward the U.S. Capitol. The sculptural, architectural tower element at the northwest corner of the building marks the transition between the U.S. Capitol Complex and the Capitol Gateway neighborhood. The Project also improves the view to the south towards the new Fredrick Douglass Bridge. The west façade of the building aligns with the initial 110-foot height of the adjacent residential building to the south, thus providing the streetscape consistency intended by the M and South Capitol Street Sub-Area requirements.

Special Exception Criteria (Subtitle X § 901.2)

31. The Application asserted that the Project satisfied the special exception criteria of Subtitle X § 901.2(a) and (b), as required by Subtitle I 701.2(a). Specifically, the Project will be in harmony with the purpose and intent of the Zoning Regulations and Maps because:

- it is consistent with the stated purposes of the Downtown (“D”) zones, and the D-5 zone specifically, by providing for the orderly development of the Subject Property for high-density residential purposes;
- will comply with the specific design requirements for a development in the M and South Capitol Streets sub-area with the exception of the 75% street wall requirement under Subtitle I § 616.7(f), from which the Applicant has requested relief as permitted under Subtitle I § 701.3;
- it will promote public health and safety by redeveloping vacant and underutilized property with a well-designed residential project that will advance District and Federal goals for the South Capitol Street corridor;

- it will not tend to affect adversely the use of neighboring property as the proposed building is consistent with the prevailing height, massing and character of the surrounding neighborhood, and fully complies with the height and density standards for the D-5 zone;
- it will not cause adverse impacts to light and air, and the added residential units will not result in undue concentration of population, but rather will add vitality to a part of the South Capitol Street corridor that is in needs additional activation; and
- it will create favorable conditions related to housing, urban design, pedestrian circulation, and sustainability.

APPLICANT’S JUSTIFICATION FOR APPROVAL OF AREA VARIANCE

32. The Application requests a variance from the requirement under Subtitle I § 616.7(f) that a minimum of 75% of the street-wall on the east side of South Capitol Street shall be constructed on the [15-foot] setback line.
33. The Application asserted that the Subject Property is affected by the following exceptional conditions:
- only 127 feet of the 342 foot west façade of the proposed building, or approximately 37%, has direct frontage on South Capitol Street due to the presence of Lot 805, a 24-foot wide, District-owned property located between the Subject Property and South Capitol Street; and
 - the portions of the Subject Property that have actual frontage on South Capitol Street are encumbered by easements that grant the District perpetual rights to construct highway infrastructure in these areas;
34. The Application asserted that due to the above-described exceptional conditions the Applicant would encounter the following practical difficulties if the 75% street wall requirement were strictly applied:
- the presence of Lot 805 and the easements recorded on the Subject Property it is impossible for any part of the Project to be constructed on the 15-foot setback line; and
 - the Project cannot be modified in any way to comply with the 75% street wall requirement.
35. The Application asserted that the variance can be granted without causing substantial detriment to the public good nor substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map, as follows:
- the west façade of the Project directly aligns with the residential building to the immediate south which, consistent with the intended purpose of the 75% street wall

requirement, results in a cohesive building line along the entire block between the freeway and Eye Street; and

- the inability to construct the Project on the 15-foot setback line results in additional streetscape along South Capitol Street that can be utilized for greater landscaping, seating, and bicycle parking.

PUBLIC HEARING

36. At the public hearing, the Applicant provided the additional information requested by OP in its hearing report, and agreed to the proposed condition.

37. At the public hearing, the Applicant agreed to the conditions provided in the DDOT, except that the Applicant and DDOT agreed to revised language for the condition related to the shared Eye Street access. The revised condition, as read into the record by the Applicant at the public hearing is as follows:

In the event Lot 809 is redeveloped with a residential, office, hotel, retail or similar use permitted in the D 5 zone the Applicant agrees that the owner of Lot 809, at no cost to the Applicant, may widen the Eye Street curb cut to facilitate its shared use. Additionally, the plans for the redevelopment of the Lot 809 may include the shared use of the north/south driveway on the Applicant's property for vehicular outbound access to Eye Street at no cost to the owner of Lot 809 or the District Government. The shared access of the driveway shall include use of but no modifications to the pedestrian or bicycle improvements constructed by the Applicant. Prior to the issuance of a certificate of occupancy, the Applicant shall record a covenant consistent with the foregoing. The covenant shall be subject to DDOT's approval. A copy of the recorded covenant will be provided to the DDOT Planning Sustainability Division.

38. At the public hearing, the Applicant addressed concerns and issues raised by the Commission as follows:

- The Applicant committed to using a darker color material on the east façade of the proposed building; and
- The Applicant agreed to set aside 20% of the dwelling units for two- and three-bedroom units, and reiterated that none of the units will be studios.

III. RESPONSES TO THE APPLICATION

OFFICE OF PLANNING

39. OP submitted a report dated November 29, 2021 (Ex. 21), that:

- Recommended that the Zoning Commission approve the Application.
- Concluded that the Project meets the applicable criteria specified in the following sections of the Zoning Regulations;

- Subtitle I § 616 for buildings within the M and South Capitol Streets Sub-Area of the downtown zones;
 - Subtitle I Chapter 7 design review criteria for the downtown zones;
 - Subtitle X Chapter 9 general special exception review criteria; and
 - Subtitle X § 1001.1 Area Variance from Subtitle I § 616.7(f), 75% street wall requirement.
- Made its recommendation contingent on approval of a condition prohibiting above the third floor on the southern, western or northern building faces, and any illuminated ornament, including lighting of or from the northwest “tower” architectural embellishment.
 - Requested that the Applicant provide additional information or responses by the hearing with respect to the appearance of the western face of the building; consideration of certain design enhancements, and the square footage of any green area.

DISTRICT DEPARTMENT OF TRANSPORTATION

40. DDOT submitted a report dated November 29, 2021 (Ex. 22), that:

- Stated no objection to the Application, subject to the following three (3) conditions, and with the expectation that the Applicant continue to coordinate with DDOT on public space matters outside of the zoning process;
 - implement the TDM Plan as proposed in the Applicant’s CTR;
 - record a public access easement, subject to DDOT approval, or come to another agreement with DDOT to allow unrestricted access to the Eye Street driveway for the property immediately to the east (Lot 809) at no cost to that property owner or the District Government; and
 - grant flexibility for (i) the streetscape design along South Capitol Street to allow for adjustment to accommodate DDOT’s South Capitol Streetscape Project, and (ii) the design for the area under the I-695 freeway so the final designs can be determined during public space permitting, subject to DDOT and PSC approval.
- DDOT found the Applicant’s CTR was based on sound methodology and assumptions, and further found the Applicant’s proposed TDM plan was sufficiently robust to support the Project and encourage non-automotive travel to and from the site, including the installation of a 19-dock Capital Bikeshare station and one-year of both Capital Bikeshare memberships and preloaded SmarTrip cards.
- DDOT did not request any additional strategies or revisions to the Applicant’s TDM Plan, nor did DDOT request any mitigation

AFFECTED ANCS

41. Neither ANC 6D nor ANC 6B submitted a written report into the case record, nor appeared at the public hearing.

42. In its Supplemental Prehearing Statement (Ex. 20) and at the public hearing, the Applicant stated that it had received correspondence from ANC 6B on September 1, 2021, stating that ANC 6B would not be participating in the design review case and instead would defer to the interests and experience of ANC 6D.
43. In its Supplemental Prehearing Statement, the Applicant provided an update on its engagement with ANC 6D, indicating that on October 18, 2021, ANC 6D voted to oppose the Project based upon the following five issues, to which the Applicant provided a response:
 - the lack of retail within the Project;
 - the placement of balconies on the north side of the Project facing the freeway;
 - the overall size of the Project relative to ingress / egress and orientation to Eye Street;
 - the amount of parking within the Project; and
 - the amount of improvements and programming in the area below the freeway.

OTHER RESPONSES

44. No requests for party status were submitted in the case.
45. No letters in support or opposition were submitted to the case record.

CONCLUSIONS OF LAW

AUTHORITY

1. Pursuant to the authority granted by the Zoning Act, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a design review application consistent with the requirements of Subtitle I § 616.8 and Chapter 7.
2. Pursuant to Subtitle I § 616.8, the Project requires design review under Subtitle I, Chapter 7, because the building fronts on a designated tertiary street segment of the M and South Capitol Streets Sub-Area. The applicable provisions of Subtitle I, Chapter 7, are set forth in Subtitle I § 701.2(a). Subtitle I § 701.2(a) provides that in addition to the provisions set forth therein, the Applicant must also meet the special exception standards of Subtitle X, Chapter 9.
3. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl.); *see also* Subtitle X § 901.2) authorizes the Board of Zoning Adjustment to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board of Zoning Adjustment, the special exceptions:
 - *will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map;*
 - *will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map; and*
 - *complies with the special conditions specified in the Zoning Regulations.*

4. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." (*First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).)
5. Subtitle I § 701.3 authorizes the Commission to hear and decide any additional requests for special exception or variance relief needed for the subject property. Such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval.
6. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(3) (2018 Repl.); *see also* Subtitle X § 1000.1) authorizes the Board of Zoning Adjustment to grant variances "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."

DESIGN REVIEW

7. 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, Chapter 6)

8. The Commission concludes that the Application satisfies the applicable standards of Subtitle I § 616.7(d) and (e) for the M and South Capitol Streets Sub-Area because:
 - **Subtitle I § 616.7(d)** – the Project provides a 1:1 setback from the building line along South Capitol Street above 110 feet in height; and
 - **Subtitle I § 616.7(e)** – there are no openings adjacent to South Capitol Street that provide entrances or exits for parking and loading.

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

9. The Commission concludes that the Application satisfies the applicable standards M and South Capitol Streets Sub-Area design review standards of Subtitle I § 701.2(a) because:

- **Subtitle I § 701.2(a)(1)** – The Project helps to achieve the objectives of the M and South Capitol Street Sub-Area by:
 - preserving the important view of the Capitol Dome by strengthening the street-wall definition along South Capitol Street, as the Project will be set back for its entire height at least 15 feet from South Capitol Street and will provide additional upper-level setbacks above 110 feet;
 - significantly advancing South Capitol Street as a vibrant, high-density, mixed-use corridor, as the Project will implement a prominent podium-level that will reinforce the pedestrian scale, activate the streetscape, and facilitate a safe pedestrian experience.
- **Subtitle I § 701.2(a)(2)** – The Project is in context with the surrounding neighborhood and street patterns because the Project implements:
 - distinct façade designs for the building elevations facing South Capitol Street and the freeway;
 - active ground floor lobbies and amenity space that will enliven the streetscape and improve pedestrian connectivity and safety between Capitol Hill and the South Capitol Street corridor;
 - massing, articulation, and materials that responds to the context along the South Capitol Street corridor and other nearby developments, many of which are constructed with similar materials;
 - brick as the primary façade material and incorporation of balconies to harmonize with the residential building to the immediate south and several other recent residential and mixed-use projects along the corridor and to the east; and
 - a strong architectural design that is responsive to the surrounding street pattern, as well as the very unique access constraints that affect the Subject Property (*see* Finding of Fact No. 11), that maximize the Subject Property’s role as a transition site between the U.S. Capitol Complex to the north and the mixed-use South Capitol Street corridor and Capitol Gateway neighborhood to the south.
- **Subtitle I § 701.2(a)(3)** – The Project minimizes conflict between vehicles and pedestrians by:
 - distributing vehicular access to two access points and establishing an efficient circulation pattern, specifically, using the South Capitol Street entrance for right-in / right-out vehicle and loading access, and limiting the Eye Street access to resident outbound traffic;

- overcoming a lack of adequate alley access by reusing an existing curb cut on South Capitol Street, just south of the freeway, for access to parking and loading;
 - utilizing the South Capitol Street access to accommodate all visitor and delivery pick up and drop off activity onsite, rather than leaving it to occur randomly on South Capitol Street;
 - limiting vehicular circulation to outbound only along the Eye Street driveway, and providing dedicated pedestrian and bicycle facilities along the remaining portion of the driveway; and
 - reconstructing the streetscape adjacent to the proposed building in accordance with DDOT standards for South Capitol Street, following removal of the freeway access ramp, which will significantly improve the safety and quality of pedestrian circulation in an area that currently is unsatisfactory.
- **Subtitle I § 701.2(a)(4)** – The Project minimizes unarticulated blank walls adjacent to public spaces through face articulation because it is designed with:
 - primary and secondary residential lobbies and residential amenities that will be visible through clear inviting windows and exciting architectural expression;
 - depth and detail through exterior balconies and the mix of glass and masonry materials;
 - along South Capitol Street, massing that is layered across the face of the building, and pulls back as the façade approaches the freeway to maximize views of the U.S. Capitol;
 - along the north façade, a saw-tooth expression that steps away from the freeway that provides additional architectural interest when viewed from the freeway; and
 - significant setbacks and outdoor courts and terraces that will enhance overall aesthetic of the building.
 - **Subtitle I § 701.2(a)(5)** – The Project has been designed to minimize its impact on the environment. The Project will meet the standards of LEED Gold under LEED v4 for Multifamily Mid-Rise and will incorporate various sustainable features.

10. The Commission concludes that the Application satisfies the applicable standards M and South Capitol Streets Sub-Area design review standards of Subtitle I § 701.2(b) because:

- **Subtitle I § 701.2(b)(1)** – The massing and materials of the Project will advance the establishment of South Capitol Street as a monumental civic boulevard, because, despite some unique setback conditions, the Project will:
 - replace a largely vacant site with a well-defined street wall that aligns with the building to the south and provides the requisite upper level setbacks above 110 feet;
 - establish an urban consistency along the South Capitol Street corridor;

- utilize articulation and materials that are responsive to the surrounding context but give the Project a unique character.
- **Subtitle I § 701.2(b)(2)** – The Project recognizes the proximate residential neighborhood use and context by:
 - incorporating a height and massing that is compatible with other high-density residential, commercial, and mixed-use developments along the South Capitol Street corridor and to the east of the Subject Property;
 - locating access to parking and loading in a manner that will minimize pedestrian and vehicle conflicts given the constraints of the site and the surrounding context, and overcome a lack of adequate alley access; and
 - strategically locating bike facilities and a bike lane along the Eye Street driveway to ensure safe connections for residents.
- **Subtitle I § 701.2(b)(3)** – The view analysis provided by the Applicant on Sheets 20 – 21 of the Plans (Ex. 15A1) shows that the Project will improve the vista toward the U.S. Capitol by strengthening the eastern edge of the view corridor. As a result of step down techniques, the view to the south towards the new Frederick Douglas Bridge and monumental oval is also improved by the Project. Further, the alignment with the building to the south successfully achieves the streetscape consistency intended under the M and South Capitol Street Sub-Area requirements.

Special Exception Standards (11-X DCMR § 901.2)

11. The Commission concludes that the Application satisfies the requirement of Subtitle I § 701.2(a) to meet the special exception standards set forth in Subtitle X, Chapter 9 because:

- **Subtitle X § 901.2(a)** – The Project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps for the D-5 zone because the Project will promote public health and safety by redeveloping vacant and underutilized property with a well-designed building that will advance District and Federal goals for the South Capitol Street corridor. Consistent with the general purposes of the D zones and specific purpose of the D-5 zone, the proposed Project is a high-density residential building that is compatible with the surrounding context and will elevate the vibrancy and architectural quality of the South Capitol Street corridor. Further, as envisioned under the M and South Capitol Street Sub-Area, the Project will help ensure the preservation of the historically important axial-view of the U.S. Capitol by adhering to the requirements of the Sub-Area except where physical constraints prevent strict compliance. Where physical constraints do exist (*see* Finding of Fact No. 11), the Project design is informed by the immediate context such that the overall design goal of establishing South Capitol Street as a monumental boulevard with consistent street walls and upper-level setbacks, and a high-quality public realm, is achieved. Thus, consistent with the overall intent of the Zoning Regulations, the Project creates favorable conditions related to housing, urban design, pedestrian circulation, and sustainability.
- **Subtitle X § 901.2(b)** – The Project will not tend to affect adversely the use of neighboring property. The majority of developed properties in the immediate area along

South Capitol Street and to the east are improved with 110 to 130-foot tall, high-density mixed-use buildings. Thus, the proposed height and density of the Project will be consistent with the surrounding massing and neighborhood character and fully complies with the height and density standards for the D-5 zone. The proposed use for the Project is also fully consistent with the variety of residential and commercial uses in the surrounding area, and the ground-floor lobby and amenity spaces and significant streetscape improvements will further invigorate the northern end of the South Capitol Street corridor and advance the vision for the corridor as a safe, walkable and pedestrian-friendly urban boulevard. The proposal to provide vehicular access from both South Capitol Street and Eye Street will minimize potential conflicts between pedestrians and vehicles by establishing a more even distribution of potential trips rather than directing all vehicle and truck trips to Eye Street. Access restrictions such as right-in / right-out on South Capitol Street and outbound only on Eye Street will further ensure safe and efficient access to the Subject Property for all modes of travel. Furthermore, the Project will not interfere with the District's plans to remove the freeway access ramp that may materialize in the future.

VARIANCE RELIEF

12. Based on the record before the Commission, the Commission concludes that the Applicant has met the burden of proof for the requested variance because the property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition; the Applicant would encounter practical difficulties if the 75% street wall requirement of Subtitle I § 616.7(f) were strictly applied; and the variance would not cause substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

13. The Commission must give “great weight” to the recommendations of OP pursuant to § 13(d) of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
14. The Commission finds persuasive OP’s analysis of the Application as compliant with the requirements for the requested design review and variance and concurs with OP’s recommendation to approve the Application.

“GREAT WEIGHT” TO THE ANC REPORT

15. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was prepared by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.); *see* Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an

affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).”)

16. Neither affected ANC 6D or 6B submitted a written report into the case record. Therefore, there are no issues and concerns to which the Commission is required to give “great weight” in this case.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application subject to the following conditions for (whenever compliance is required prior to, on, or during a certain time, the timing of the obligations is noted in **bold and underlined text**):

- Design review approval pursuant to the applicable 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; and
- Variance approval pursuant to Subtitle I § 701.3 and Subtitle X § 1000.1 from the requirement that a minimum of 75% of the street-wall on the east side of South Capitol Street shall be constructed on the (15-foot) setback line under Subtitle I § 616.7.

A. PROJECT DEVELOPMENT

1. The Project shall be built in accordance with:
 - the plans and elevations dated October 19, 2021 (Ex. 15A1 – 15A3, and 15B), as modified by Ex. 20A – 20B (collectively, the “Final Plans”), and as further modified by the following guidelines, conditions and standards.
2. In accordance with the Final Plans, the Project shall have:
 - 13 stories;
 - a maximum building height of 130 feet;
 - a maximum floor area ratio of 6.13;
 - approximately 520 residential units;
 - a publicly accessible dog park on a portion of the Subject Property below the SE/SW Freeway; and
 - approximately 272 parking spaces on three levels of aboveground parking.
3. Of the 520 residential units, 20% (or 104 units) shall be two- and three-bedroom units. The Project shall not provide any studio units.

4. The Applicant shall use of a darker color material on the east façade of the proposed building than as shown on Sheet 17 at Exhibit 15A1 and Sheet 36 at Exhibit 15A2.
5. No signage shall be provided above the third floor of the building.
6. No illuminated ornament shall be provided on the building, including lighting of or from the northwest “tower” architectural embellishment;
7. The Applicant shall have flexibility with the design of the Project in the following areas:
 - a. Interior Component: 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 this Order.
 - b. Exterior Materials – Color: to vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by this Order.
 - c. Exterior Details: Location and Dimensions: 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 this Order. Examples of exterior details include, but are not limited to, doorways, canopies, railings, and skylights.
 - d. Landscape: to vary the final selection of landscaping materials based on availability at the time of construction.
 - e. Number of Units: to provide a range in the approved number of residential dwelling units of plus or minus ten percent (10%).
 - f. Parking Layout: to make refinements to the approved parking configuration, including layout and number of parking spaces 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.
 - g. Signage: to vary 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.
 - h. Sustainable Features: to vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the plans approved by this Order and are compliance with the DC signage regulations.

- i. 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.

B. REQUIREMENTS RELATED TO THE ISSUANCE OF A BUILDING PERMIT

1. **Prior to the issuance of a building permit**, the Applicant shall provide the Zoning Administrator:
 - a. A statement by the architect confirming the color that will be used for the east façade of the building, which shall be darker than the color shown on Sheet 17 at Exhibit 15A1 and Sheet 36 at Exhibit 15A2. The statement shall include updated sheets depicting the darker color material.
 - b. evidence that the Applicant has registered the Project with the U.S. Green Building Council for certification at the LEED Gold v4 level; and
 - c. the LEED scorecard demonstrating that the Project is on track to achieve certification at the LEED Gold v4 level, provided that the Applicant shall have the flexibility to vary the approved sustainable features of the Project as long as the total number of LEED points achievable for the Project does not decrease below the minimum required for the foregoing LEED standard.

C. REQUIREMENTS RELATED TO THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY

1. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall record a covenant that provides in the event Lot 809 in Square 695 (hereinafter “Lot 809”) is redeveloped with a residential, office, hotel, retail, or similar use permitted in the D-5 zone, the Applicant agrees that the owner of Lot 809, at no cost to the Applicant, may widen the Eye Street curb cut to facilitate its shared use. Additionally, the plans for the redevelopment of Lot 809 may include the shared use of the north/south driveway on the Applicant’s property for vehicular outbound access to Eye Street at no cost to the owner of Lot 809 or the Government of the District of Columbia. The shared access driveway shall include use of but not modifications to the pedestrian or bicycle improvements constructed by the Applicant. The covenant shall be subject to DDOT’s approval; and a copy of the recorded covenant shall be provided to the DDOT Planning Sustainability Division.
2. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall demonstrate that it has funded and installed a 19-dock Capital Bikeshare station with 12 bikes and provided funding for one-year of maintenance and operations costs, subject to DDOT approval of a location on public or private property.

3. **Prior to the issuance of the final certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with evidence, including an updated LEED scorecard, that the Project is on track to achieve certification from the U.S. Green Building Council at the level of LEED Gold v4, provided that the Applicant shall have the flexibility to vary the approved sustainable features of the Project as long as the total number of LEED points achievable for the Project does not decrease below the minimum required for the foregoing LEED standards.

D. REQUIREMENTS FOR THE LIFE OF THE PROJECT

1. **For the life of the Project**, the Applicant shall adhere to the following Transportation Demand Management plan measures:
 - a. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile.
 - b. Identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement.
 - c. 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.
 - d. Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to the residents, 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. 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.
 - g. Provide residents who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future.
 - h. Transportation Coordinator will subscribe to goDCgo's residential newsletter.

- i. Post all TDM commitments on website, publicize availability, and allow the public to see what commitments have been promised.
- j. Provide a free SmarTrip card to every new resident and a complimentary Capital Bikeshare coupon good for one ride.
- k. Meet ZR16 short- and long-term bicycle parking requirements by providing 112 long-term spaces and 28 short-term spaces free of charge to residents.
- l. Provide additional short- and long-term bicycle parking spaces above ZR16 requirements (amount to be determined at a later date).
- m. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids' bikes.
- n. Install a Transportation Information Center Display (electronic screen) within the lobby 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, carsharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles.
- o. Will not lease unused residential 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).
- p. Designate one (1) parking space in the vehicle parking garage for car-sharing and micromobility services to use with right of first refusal. If an agreement has not been reached with one of these services to occupy all of the dedicated spaces, the Applicant will provide one (1) additional year of membership to Capital Bikeshare for each resident after the building has opened.
- q. Designate two (2) parking spaces for vans to be used by District residents who vanpool to work.
- r. Provide a bicycle repair station in each long-term bicycle parking storage room.
- s. Provide one (1) collapsible shopping cart (utility cart) for every 50 residential units, for a total of 10, to encourage residents to walk to the grocery shopping and run errands.
- t. To encourage teleworking, a business center will be provided on-site and available for free to residents 24 hours per day, 7 days per week. Access to a copier and internet services will be included.

- u. Provide an annual membership to Bikeshare to each resident for one (1) year after the building opens.
- v. Offer SmarTrip cards pre-loaded with \$25 for all new residents for one (1) year after the building opens.
- w. Fund and install a 19-dock Capital Bikeshare station with 12 bikes and fund one-year of maintenance and operations costs.

E. VALIDITY

1. This Application shall be valid for a period of two years from the effective date of this Order. Within such time, an application for building permit must be filed as specified in Subtitle Z § 702.2. Construction must begin within three years after the effective date of this Order as specified in Subtitle Z § 702.3.

VOTE (December 9, 2021):

5-0-0 (Joseph S. Imamura, Peter G. May, Anthony J. Hood, Robert E. Miller, and Peter A. Shapiro to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 21-12 shall become final and effective upon publication in the *DC Register*; that is, on _____, 2022.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.