

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 22-28**  
**Z.C. Case No. 22-28**  
**1100 SOUTH CAPITOL, LLC**  
**(Design Review @ Lots 814 and 817 in Square 698)**  
**November 17, 2022**

Pursuant to notice, at its public hearing on November 17, 2022, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of 1100 SOUTH CAPITOL, LLC (the “Applicant”) for Design Review approval pursuant to Subtitle I § 616.8 and Subtitle I, Chapter 7 of the Zoning Regulations of the District of Columbia (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 814 and 817 in Square 698 (the “Subject Property”) in the D-5 zone to construct a new residential building containing approximately 263 dwelling units, ground floor and rooftop amenity space, and approximately 162 vehicle parking spaces (the “Project”).

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**

**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, in which the Subject Property is located and so is an “affected” ANC 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 to ANC 6D and the owners of all property within 200 feet of the Subject Property on May 31, 2022. (Exhibit [“Ex.”] 4G.)
4. Pursuant to Subtitle Z § 402, the Office of Zoning (“OZ”) sent notice of the November 17, 2022, virtual public hearing, to the following on August 9, 2022: (Ex. 7)
  - The Applicant;
  - ANC 6D;
  - ANC Commissioner 6D02, 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 District Department of Transportation (“DDOT”);
  - The Department of Energy and Environment (“DOEE”);
  - The Department of Consumer and Regulatory Affairs (“DCRA”);<sup>1</sup>
  - The Office of the Attorney General;
  - The At-Large Members of the Council of the District of Columbia;
  - The National Capital Planning Commission and
  - The owners of property within 200 feet of the Subject Property.
5. OZ also published notice of the November 17, 2022, virtual public hearing in the August 19, 2022, D.C. Register as well as on the calendar on OZ’s website. (Ex. 5.)

**SUBJECT PROPERTY**

6. The Subject Property is located on the west side of Square 698 and is bounded by L Street, SE to the north, a 15-foot public alley to the east, private property to the south, and South Capitol Street to the west.
7. The Subject Property includes approximately 32,556 square feet of land area and is improved with a surface parking lot.
8. To the immediate south of the Subject Property is property improved with the St. Vincent de Paul Church (Square 698, Lot 818) (the “Church” and the “Church Property”). To the east of the Subject Property, across the public alley, is a residential condominium building known as The Kennedy on L, which has frontage on L Street (Square 698, Lot 27) (“The Kennedy”). To the south of The Kennedy, at the intersection of M and Half Streets, is an office building known as 20 M Street (Square 698, Lot 32). Across South Capitol Street from the Subject Property is a largely vacant site that was approved by the Zoning Commission to be developed with a 130-foot tall building pursuant to Z.C. Order No. 20-14, effective as of November 5, 2021.
9. Pursuant to D.C. Law 7-65, effective January 28, 1988, portions of the public alley in Square 698 were closed. As part of the alley closing, a non-exclusive surface easement was established on the eastern-most five feet of the Subject Property, to a height of 16 feet, to allow adequate space for vehicles serving adjacent properties (the “Alley Easement”). The Alley Easement extends for the majority of the Subject Property’s east frontage and stops at the southern edge of the east-west alley in the square.
10. The Subject Property also benefits from a light and air easement over the Church Property, which prohibits any development over the northern-most 20 feet of the Church Property (the “Church Easement”). The primary purpose of the Church Easement is to allow for windows on the south façade of development on the Subject Property. The area of the Church Easement is used as a parking lot for the St. Vincent de Paul Church.

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<sup>1</sup> Following notice, DCRA became known as the Department of Buildings.

## **ZONING**

11. The Subject Property is zoned D-5 and is located 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.)

## **THE APPLICATION**

### **THE PROJECT**

12. The Application proposed to construct the Project with:

- Approximately 301,249 square feet of gross floor area (“GFA”) (approximately 9.3 floor area ratio (“FAR”));
- Approximately 263 residential units, plus or minus 10%;
- Approximately 162 below-grade parking spaces;
- A maximum building height of 130 feet with upper-level setbacks starting at 110 feet fronting South Capitol Street; and
- A penthouse comprised of residential amenity space, residential units, and mechanical equipment, with heights and setbacks in compliance with Subtitle C, Chapter 15.

13. The primary pedestrian entrance to the Project is located on L Street near the intersection with South Capitol Street. Active residential amenity space is provided along the South Capitol Street frontage. Should the demand for retail use increase in the future, the Applicant requested flexibility to replace portions of the proposed ground floor residential amenity space with retail space, so long as doing so does not change the ground floor façade design other than to vary number and the location of ground floor entrances to comply with any applicable District of Columbia laws and regulations or the needs of future retail tenants. The Applicant also requested flexibility to incorporate retail entrances on the South Capitol Street façade.

14. All vehicular access to the Subject Property is taken from the public alley, and all existing curb cuts will be closed. Approximately 162 vehicular parking spaces, plus or minus 10%, are located in two-levels of a below-grade garage with access from the public alley. One 30-foot loading berth, one 100-square foot loading platform, and one 20-foot service/delivery space are located on the ground floor, also accessed via the alley. Pepco vaults are located at the northern end of the alley.

15. Due to the existing Alley Easement, the Project is setback five-feet from the north-south public alley for the majority of its frontage. The Applicant will voluntarily set back the Project for the remaining portion of the Subject Property that is not subject to the Alley

Easement, thereby creating a consistent width along the entire alley frontage and establishing an effective alley width of 20 feet. The setback extends up the Project through the second floor, with a five-foot overhang above. Vertical clearance from the surface of the alley to the overhanging 3<sup>rd</sup> level is at least 16 feet.

16. Long- and short-term bicycle parking is provided in the amounts and in locations consistent with the Zoning Regulations. An interior bicycle storage room is located on the ground level of the Project with access via the alley. Short-term exterior bicycle parking is located on both L and South Capitol Streets.
17. A 60-foot long pick-up/drop-off (“PUDO”) zone is proposed on L Street adjacent to the building’s primary residential entrance. A 30-foot long curbside loading zone is proposed farther to the east on L Street near the intersection with the north-south alley. The PUDO and curbside loading zones are in addition to the full-sized and zoning compliant loading facilities within the building.
18. The Project is a 13-story brick and masonry-trimmed residential building that grows out of the neighborhood’s industrial past and ties into the scale and character of the surrounding neighborhood, particularly the distinctive Romanesque revival Church building to the south. The Project rises as an I-shaped structure, creating a west-facing court at the second level and an east-facing court at the third level. The façade is comprised of warm to medium toned brick with complementing limestone and masonry trim and punched windows with additional detailing in warm grey metal. The scale and proportions of the vertical wings and the coloration of the masonry harmonize with the existing Church, and the mid-scale façade elements create a strong relationship to the Church’s spire.
19. The South Capitol Street façade includes two primary wings flanking the raised central courtyard. The ground floor includes large storefront windows with amenity space inside to bring the streetwall close to the sidewalk and activate the pedestrian level. The second-floor garden courtyard will be visually attractive to building residents and help to meet stormwater management and GAR requirements. Along South Capitol Street, adjacent to the courtyard, is an ivy-covered colonnade that creates a distinctive frontage. Thoughtfully detailed brickwork with fluting gathers the windows at the third floor to create a continuous horizontal band that reads as the base for the main body of the building. Vertically grouped windows at the top, combined with French balconies and building setbacks, create the implied reading of a crown as the building meets the sky. The windows are accented with soldier-course brick headers and masonry sills. Outdoor terraces on the upper levels are also provided.
20. On the north, west, and south facades, the building is accented with series of two and three-story grouped windows framed in dark masonry as well as a variety of paired smaller windows or larger picture windows with flanking sidelights. The north façade features a double-height lobby and projecting bay to emphasize the primary pedestrian entrance. The north facade also features a series of four vertical window groups distinguished by a dark masonry frame spanning from levels four through nine creating a syncopated rhythm along L Street.

21. Along L and South Capitol Streets, charcoal gray metal-and-glass storefronts, detailed with muntins, punctuate the façade. The building's double entry doors are set into a masonry portal opening, flanked by decorative lanterns and sheltered by a metal and glass canopy; these doors are detailed with elegant metalwork. On the second floor, a continuous row of window pairs match the muntins from the ground floor; and the brick-and-metal two-story expression of the podium ties the building into the scale of the adjacent Church and neighboring residential buildings. The south façade has a consistent set of windows and series of six-story grouped windows that lend more verticality to the façade.
22. The east façade along the alley is clad in brick at the ground and second floors. The remainder of the alley façade is stucco with added articulation.
23. At the top of the building, the penthouse is clad in dark masonry with decorative frames that surround oversized windows to provide a fitting terminus to the building composition and to enrich the experience of the residents at the rooftop amenity spaces.
24. The west-facing court at the second level is approximately 63 feet x 50 feet and is defined by a landscaped wall approximately 16 feet in height, with decorative metal grills. This second-floor landscaped courtyard is planted with Crepe Myrtle (or similar) trees and defined by layers of evergreen and perennial seasonal plantings. The east-facing court along the alley is approximately 63 feet x 35 feet and is located at the third level of the building. This courtyard is planted with sedum. Neither courtyard will be accessible to building residents.
25. The roof includes outdoor terraces and amenity spaces for residents of the building. The northern portion of the roof has a dog run on its east side; the southern portion of the roof has a swimming pool and outdoor amenity space. The outdoor roof areas are defined by a variety of native plantings, including trees, evergreen shrubs, grasses, and summer flowering perennials. All inaccessible roof areas are planted with native sedum and grasses.
26. As required by Subtitle I § 616.7, the building is setback 15 feet from its property line along South Capitol Street. The setback area is fully open to the public and provides a lush landscaped area that includes new plantings, bioretention areas, trees and tree pits.
27. The public space along South Capitol Street, to the west of the 15-foot setback area, includes three linear tree planting strips at the curb and planting beds that define a 14-foot sidewalk. The planting strips contain trees, grasses, and evergreens. Six-foot wide bands of cobblestones fill the spaces between the tree planting strips. Bicycle racks are also located in this area.
28. On the north side of the Building, L Street is planted with trees in low impact development ("LID") tree pits, also planted with grasses and evergreens. Similar to South Capitol Street, six-foot wide bands of cobblestones fill the spaces between the LID tree pits and complete the buffer zone between the sidewalk and the curb. Bicycle racks are also located in this area.
29. As the Subject Property's southern neighbor, the Applicant has worked closely with representatives of the Church and has agreed to complete exterior improvements to the

Church Property to further enhance South Capitol Street as a monumental boulevard and generally improve the urban aesthetic of the block. The improvements include new landscaping, including trees, lawn areas, plantings, and planters; new fences and gates; a dumpster and dumpster enclosure; relocated signage and statue; repaved parking lot; and a repainted and painted rectory façade to better complement the Church. While the final details will be as approved by the Church, the proposed improvements result in more appealing accommodations for members of the Church, residents and visitors of the surrounding area, and pedestrians walking in the neighborhood.

30. A variety of sustainable design features are proposed as part of the Project as follows:

- The building is designed to meet the standards of LEED-NC Gold under the v.4 LEED standard.
- EV charging stations are provided in the parking garage that will be able to provide power for 25 vehicles; additional infrastructure will be built to provide power for an additional 25 vehicles in the future (“EV-ready”).
- A minimum of nine outlets are provided in the long-term bicycle storage room for residents to plug in electric bikes and/or scooters.
- The Project uses a heat pump system and the building is designed with a window-to-wall ratio of approximately 40%, which together create a highly energy efficient building and shell. The Applicant will also evaluate apartment compartmentalization through a blower door test to ensure airtight construction and minimize air transfer and leakage.
- The Project uses a low-carbon concrete specification that requires aggressive cement replacement percentages to lower the Project’s embodied carbon footprint.
- The Applicant will conduct a Life Cycle Assessment on the Project’s structural and envelope components to optimize the building design and procurement with respect to greenhouse gas emissions.
- Building materials have been specified to protect interior air quality through low-emission products from manufacturers that disclose chemical components.
- Occupant health and comfort is emphasized through maximizing access to daylight; optimizing landscaping at the roof, ground, and courtyard levels; incorporating customizable lighting scene controls in public areas; offering convenient access to bicycle storage; and providing highly-filtered fresh air delivery.
- Best construction practices will be implemented, including storm water and particulate pollution prevention, construction waste diversion, protection of indoor air quality during construction, and the installation of temporary LED lighting and high-efficiency heat systems.

- An enhanced commissioning scope will be established to ensure correct installation and functionality of the energy-using systems prior to occupancy. After occupancy, green cleaning, pest management, and recycling protocols will contribute to the ongoing sustainability of the building.
31. Signage is provided at the building’s residential entrance as shown on the signage plan. (Ex. 13A, Sheet S01.) If ground floor retail is provided in the future, any associated signage would be located at the storefront level and would be consistent with all applicable signage regulations.
32. Exterior lighting is provided as shown on the lighting plan. (Ex. 13A, Sheets LTG01 to LTG04.) The proposed lighting provides functional illumination for building occupants and complies with code requirements.

### **APPLICANT’S SUBMISSIONS**

#### **INITIAL SUBMISSION**

33. The Applicant submitted the initial Application on July 29, 2022 (Ex. 3-4.)

#### **COMPREHENSIVE TRANSPORTATION REVIEW**

34. The Applicant submitted a Comprehensive Transportation Review (“CTR”) Report dated October 3, 2022 (the “CTR”), which concluded that the Project would not have a detrimental impact to the surrounding transportation network assuming the proposed site design elements and Transportation Demand Management (“TDM”) plan are implemented, based on the following conclusions: (Ex. 11A.)
- Vehicular access to the parking garage is provided from the north-south public alley on the eastern edge of the Subject Property, which has an effective width of 20 feet due to the Alley Easement and the building setback;
  - All truck turning maneuvers will occur within the Subject Property and in the public alley, allowing for head-in/head-out access to and from the public roadway network. The number of loading berths and service/delivery spaces meet all zoning and DDOT dimensional requirements;
  - The Project will meet zoning requirements for vehicle parking by providing approximately 162 parking spaces within the below grade garage. The parking supply does not meet any of the criteria in the Zoning Regulations that would trigger mitigation for “excess parking;”
  - The addition of vehicular trips generated by the Project will not significantly impact delays or queues at any of the study intersections, and the Project does not trigger mitigation requirements at any of the study intersections. The Project will mitigate any potential impacts through a robust TDM plan with “Enhanced” and “Enhanced Plus” components.
  - The Project will include long-term bicycle parking on the ground level and short-term bicycle parking along the perimeter of the Subject Property that meet DDOT and zoning requirements and the practical needs of Project residents. The Project is expected to generate a manageable amount of bicycle trips, and the existing bicycle facilities can accommodate these new trips;

- The Project is expected to generate a manageable amount of transit trips, and the existing service can accommodate these new trips;
- The Project is expected to generate a manageable number of pedestrian trips, and the existing pedestrian facilities can accommodate these new trips. The Project includes upgrades to the streetscape on South Capitol and L Streets which will improve the pedestrian pathways;
- The Project includes a 30-foot long PUDO zone and a 60-foot long curbside loading zone on L Street to accommodate pick-up and drop-offs (e.g., Uber, Lyft) and short term deliveries (e.g. FedEx, UPS), without double-parking on L Street and blocking traffic.

### **PREHEARING SUBMISSION**

35. The Applicant submitted a Prehearing Statement dated October 28, 2022 (Ex. 12-13), which included the following information and materials:

- Updated architectural plans and elevations for the Project that responded to comments from OP, DDOT, DOEE, the ANC, and The Kennedy. The architectural drawings relocated the west-facing courtyard to the second level of the building; revised the L Street façade to highlight the residential entrance; increased façade articulation on the east elevation; refined the landscape plan to better identify the proposed plantings; added the proposed PUDO and curbside loading zones; added residential units to the penthouse; provided information and materials showing the improvements to the Church Property; provided updated renderings; and submitted a signage plan and a lighting plan;
- Responses to comments raised by DOEE and an updated summary of the Project’s sustainability commitments;
- An updated analysis as to how the Project is fully consistent with all applicable Design Review standards;
- An analysis explaining why the Project is not subject to the standards of Subtitle X, Chapter 6, including why the Project is not required to demonstrate that it is not inconsistent with the Comprehensive Plan. However, due to the importance of evaluating all zoning actions through a racial equity lens, the Applicant provided an analysis as to how the Project helps to create and support an equitable and inclusive city as well as how the Project is not inconsistent with the Comprehensive Plan;
- Updated design flexibility;
- A description of the Applicant’s engagement with the ANC and responses to issues raised, which included the following: (i) an explanation as to why the Project does not include IZ or non-required affordable housing units; (ii) the Project’s proposed unit size and mix; (iii) additional information on vehicular movements and uses within the alley and how the Project would address pedestrian safety in the alley; (iv) a proposal to provide the PUDO and loading zones; (v) a lighting plan and a commitment to not provide any neon lighting; (vi) additional information on how the pet relief area would operate and a commitment to provide pet relief bags and a pet disposal facility; (vii) an explanation that the Applicant would identify to all new residents the specific amenities that would be included in any amenity fee, and disclose any additional amenities that would not be included in the fee; and



- A description of the Applicant’s engagement with The Kennedy’s condominium board.

**DDOT RESPONSE**

36. The Applicant submitted a Response to the DDOT Report dated November 15, 2022, (the “DDOT Response”) (Ex. 17), which included an updated TDM plan (Ex. 18). The DDOT Response stated that the Applicant agreed to DDOT’s two conditions as follows:

- The Applicant agreed to implement the TDM plan proposed in its CTR for the life of the Project unless otherwise noted, with revisions identified in the DDOT Report. The DDOT Response stated that the Applicant had continued to work with DDOT on the TDM plan, incorporated its stated requests, and submitted a new TDM plan that was intended to replace and supersede the TDM plan included in the Applicant’s CTR; and
- The Applicant agreed to add language in the final order allowing for flexibility in the design of the 15-foot setback area on private property to comply with and account for any adjustments to DDOT’s South Capitol Streetscape Project.

37. The DDOT Response also stated that the Applicant would work with DDOT during the public space permitting process to refine the exact size of the proposed PUDO and curbside loading zones, identify and select signage, and establish specific curbside restrictions.

**APPLICANT’S JUSTIFICATION FOR DESIGN REVIEW APPROVAL**

**M and South Capitol Streets Sub-Area (Subtitle I, Chapter 6)**

38. The Application stated that pursuant to Subtitle I § 603.2, there are no use regulations specific to the Subject Property.
39. The Application asserted that the Project complies with the setback requirement under Subtitle I § 616.7 because the building is setback 15 feet for its entire height and frontage from the property line adjacent to South Capitol Street.
40. The Application asserted that the Project complies with the setback requirement under Subtitle I § 616.7(d) because the building provides a 1:1 setback from the building line along South Capitol Street above 110 feet in height.
41. The Application asserted that the Project complies with the building opening requirement under Subtitle I § 616.7(e) because the Project does not have any openings in the building adjacent to South Capitol Street that provide entrances or exits for vehicular parking or loading. All parking and loading access is provided from the public alley.
42. The Application asserted that the Project complies with the streetwall requirement under Subtitle I § 616.7(f) because a minimum of 75% of the building’s streetwall along South Capitol Street would be constructed on the setback line.

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

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

- The Project complies with the criteria of Subtitle I § 701.2(a)(1) to “[h]elp achieve the objectives of the sub-area, as set forth in Subtitle I, Chapter 6, in which it is located,” because it preserves the important view of the Capitol Dome by providing setbacks at 110 feet and creating a consistent streetwall along South Capitol Street at the 15-foot setback line. The Project advances South Capitol Street as a vibrant, high-density, and mixed-use corridor by transforming an existing parking lot into a high-density residential building with active ground floor residential amenity space and large storefront windows. The adjacent streetscape will be improved with new paving, street trees, understory plantings, bioretention pits, and pedestrian-scaled features to further enhance the corridor. Taken together, the solid building base, high quality materials, large window openings, active amenity space on the ground floor, and significant streetscape improvements will encourage activity, improve safety, and enhance the pedestrian experience along South Capitol Street.
- The Project complies with the criteria of Subtitle I § 701.2(a)(2) to “[b]e in context with the surrounding neighborhood and street patterns,” because its design responds to the different contexts, massing, and design aesthetics of the surrounding neighborhood and adjacent buildings. The building responds to the Church by providing a tonal masonry façade, classical architectural details, and a two-story base and fluted third-story that complement the Church’s scale and materiality. The building also responds to the Navy Yard’s industrial motif through the use of large storefronts, oversized windows with metal panel accents, and additional metal cladding throughout the building above. More generally, the Project respects the immediately-surrounding context of buildings that have been recently constructed and/or approved along South Capitol Street, all of which have or will have a maximum height of 130 feet with setbacks at 110 feet. The building’s massing of two towers maintains the streetwall while simultaneously providing relief with the break between the two towers. On the east façade the building has a third floor courtyard facing the alley to provide greater separation, light, and air between the Project and the residential units in The Kennedy across the alley.
- The Project complies with the criteria of Subtitle I § 701.2(a)(3) to “[m]inimize conflict between vehicles and pedestrians,” because all parking and loading will be provided from the public alley. The loading facilities within the building align with the intersection of the 30-foot east-west alley to accommodate front-in and front-out truck movements to the public street and minimize potential vehicular and pedestrian conflict. The parking garage entrance is located immediately to the south of L Street, such that vehicles entering the Project will turn into the garage immediately and will not have to drive through the alley system. The Alley Easement combined with the voluntary five-foot building setback will create an effective alley width of 20 feet along the entire extent of the Subject Property’s east frontage, thus providing space for adequate vehicular maneuverability within the alley system. This design of the parking and loading facilities reduces potential conflicts with pedestrians. The Project also proposes a dedicated PUDO zone and curbside loading zone on L Street to minimize vehicles double-parking in front of the Subject Property, reduce potential traffic congestion, and enhance pedestrian and bicycle safety. In addition to the on-site facilities, the Applicant will implement a substantial TDM plan that includes “Enhanced” and “Enhanced Plus” features.

- The Project complies with the criteria of Subtitle I § 701.2(a)(4) to “[m]inimize unarticulated blank walls adjacent to public spaces through facade articulation,” by providing extensive façade articulation and high quality materials on both street-facing elevations and along the highly visible south elevation which can be seen from M Street, SE. The east elevation facing the alley and The Kennedy beyond has been designed to include articulation, windows and setbacks. The ground floor includes clear inviting windows and extensive architectural expression. The building uses high-quality materials including brick, masonry, and metal. Significant setbacks and outdoor courts and terraces are provided to increase visual interest and enhance the overall aesthetic of the building within the varied vernacular.
- The Project complies with the criteria of Subtitle I § 701.2(a)(5) to “[m]inimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards,” because it is designed to meet the standards of LEED-NC Gold under the v.4 LEED standard. Significant additional environmental benefits will be provided as set forth in Finding of Fact (“FF”) No. 30.

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

- The Project complies with the criteria of Subtitle I § 701.2(b)(1) that “[t]he building or structure shall incorporate massing, materials, and buildings and streetscape landscaping to further the design and development of properties in a manner that is sensitive to the establishment of, respectively, South Capitol Street or North Capitol Street as monumental civic boulevards,” because the Project incorporates massing, materials, and streetscape design that are sensitive to establishing South Capitol Street as a monumental civic boulevard. The building extends the existing development patterns along South Capitol Street to maintain the surrounding scale of development and create a consistent streetwall. The building has a maximum height of 130 feet with setbacks at 110 feet, which are consistent with the heights and setbacks of surrounding buildings on South Capitol Street, and the building is constructed up to the required 15-foot setback line to maintain a consistent streetwall along the corridor. After the initial filing the Applicant relocated the west-facing ground floor courtyard to the second level so that the building has an even stronger base that grounds the Project and activates the adjacent public and private spaces. The building incorporates extensive articulation, high quality materials, large storefront windows, active ground floor uses, and pedestrian-scaled features, all of which benefit South Capitol Street. Extensive landscaping and improvements to the surrounding public and private spaces further enhance the pedestrian experience and aesthetic quality of South Capitol Street as an important urban boulevard.
- The Project complies with the criteria of Subtitle I § 701.2(b)(2) that “[t]he building or structure shall incorporate massing, location of access to parking and loading, and location of service areas to recognize the proximate residential neighborhood use and context, as applicable,” because the building’s massing recognizes and respects the existing context of surrounding developments, including other 130-

foot tall buildings along South Capitol Street and 110-foot tall buildings to the immediate east, and also maintains the streetwall along South Capitol Street. The building has a large courtyard at the third floor facing east to increase its distance from The Kennedy across the public alley. Moreover, all parking and loading access and service areas are accessed from the public alley to maximize safety for pedestrians and cyclists and minimize impacts on the surrounding residential neighborhood. A five-foot wide building setback along the alley is provided to extend the Alley Easement and establish an effective alley width of 20 feet to accommodate all vehicular movements outside of the pedestrian realm.

- The Project complies with the criteria of Subtitle I § 701.2(b)(3), which states that “[t]he application shall include a view analysis that assesses openness of views and vistas around, including views toward the Capitol Dome and other federal monumental buildings,” because it provided the required view analysis at Ex. 13A, Sheets A22-A23. As shown in those views, the Project will strengthen the eastern edge of the view corridor toward the Capitol by providing a 15-foot setback, thus maintaining open views and vistas towards the Capitol Dome.

#### **Special Exception Standards (Subtitle X § 901.2)**

45. 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 general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property because:

- The Project is consistent with the stated purposes of the D zones, and the D-5 zone specifically, by providing for the orderly development of the Subject Property for high-density residential purposes;
- The Project will comply with the specific design requirements for a development in the M and South Capitol Streets sub-area;
- The Project will promote public health and safety by redeveloping vacant and underutilized property with a well-designed residential building that will advance District and Federal goals for the South Capitol Street corridor;
- The Project 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;
- The Project will not cause adverse impacts to light and air, and the 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 need of additional activation;
- The Project will create favorable conditions related to housing, urban design, pedestrian circulation, and sustainability. The ground floor design and landscaping activate and reinvigorate the vibrancy of South Capitol Street as a walkable and pedestrian-friendly urban boulevard. Establishing vehicular access only from the public alley, providing a substantial TDM plan, and proposing PUDO and curbside loading zones on L Street collectively minimize potential vehicular and pedestrian conflict and reduce reliance on private vehicles.
- The Applicant discussed the Project with the Church and The Kennedy, which are the two adjacent properties. The Church submitted a letter in support of the Project.

(Ex. 9.) The Kennedy expressed concerns regarding vehicular operations in the shared public alley, which the Applicant fully addressed at the public hearing.

## **RESPONSES TO THE APPLICATION**

### **OP**

46. OP submitted a report dated November 7, 2022, that: (Ex. 14)

- Recommended that the 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; and
  - Subtitle X, Chapter 9 general special exception review criteria.
- Made its recommendation contingent on approval of the following, to be included as a condition in the final order approving the Project:
  - Proposed Signage and Ornament: To maintain the primacy of the view of the U.S. Capitol, there should be no signage or any illuminated ornament above the top of the second-floor level on the southern, western or northern building faces.
- OP also asked the Applicant:
  - To clarify whether the proposed short-term loading zone on L Street, SE was discussed with DDOT, because it was not included in the CTR;
  - To consider making the ground level's voluntary five-foot setback along the alley into a public easement; and
  - To consider providing additional balconies in the proposed east-facing courtyard.

### **DDOT**

47. DDOT submitted a report dated November 7, 2022, that: (Ex. 15)

- Stated no objection to the Application, subject to the following 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 for the life of the Project, unless otherwise noted, with the revisions identified at p. 12 of the DDOT Report; and
  - Include language in the final order allowing for flexibility in the design of the 15-foot setback area along South Capitol Street on private property to comply with and account for any adjustments to DDOT's South Capitol Streetscape Project.

### **AFFECTED ANC**

48. ANC 6D submitted a report dated November 14, 2022, which stated that: (Ex. 22)

- At a duly noticed public meeting held on November 14, 2022, with a quorum of commissioners present, ANC 6D voted 7-0-0 to oppose the Application;

- The ANC appreciated the Applicant’s willingness to discuss and improve many aspects of the Project in accordance with the ANC's suggestions; and
- Affordable housing is a major civic priority, that the Project offers zero units of affordable housing, and that the outweighing policy considerations raised by the Applicant are less important than affordable housing.

### **OTHER RESPONSES**

49. The Church submitted a letter in support of the Application (Ex. 9), which stated that it had met with the Applicant on numerous occasions to discuss the Project, review architectural drawings, and discuss potential impacts. The Church’s letter further stated that the improvements proposed by the Applicant to the Church Property would help to “restore [the Church’s] visual prominence at the primary intersection of our neighborhood and to further the emergence of South Capitol Street as a beautiful boulevard for everyone to enjoy.” The Church offered its support for the Project and encouraged the Commission to approve the Application.
50. The president of The Kennedy’s condominium Board of Directors, Ms. Lauren Fascett, submitted a letter identifying concerns with the Project’s loading operations and entrance location at the intersection of the north-south and east-west public alleys. (Ex. 19.) Ms. Fascett alleged that the north-south alley was not wide enough to accommodate trucks accessing the Project or allow for two-way traffic. She stated that the Applicant should pull the building back from the alley by an additional 10 feet to establish an effective alley width of 30 feet and alleged that doing so would not significantly impact the Project’s overall square footage. Ms. Fascett also stated that trucks accessing the Project would block the garage entrance to The Kennedy, which is located on the north side of the east-west alley, because trucks accessing the Subject Property’s loading dock would be required to make three-point turning maneuvers. She also stated concerns with potential harm to pedestrians and drivers in the alley.

### **PUBLIC HEARING**

51. At the public hearing, the Applicant provided the additional requested by OP in its hearing report. Specifically, the Applicant’s testimony and PowerPoint presentation (Ex. 20) provided the following information:
- The Applicant agreed to OP’s stated condition regarding building signage and ornament and agreed to include OP’s proposed language as a condition in the final order;
  - The Applicant clarified that it had worked closely with DDOT on the location and size of the proposed PUDO and curbside loading zones and would continue to do so throughout the public space permitting process. At the public hearing, OP agreed that this was sufficient to address its comment.
  - The Applicant considered OP’s request to establish a public easement over the voluntary five-foot setback but instead indicated that it would agree to a condition in the final order requiring a five-foot setback for the life of the Project. At the public hearing, OP stated that providing a condition in the final order was sufficient to address its comment.

- The Applicant considered adding balconies to the Project’s east-facing court, but did not do so for a number of reasons, including: (i) projecting balconies would compromise privacy on the relatively small and narrow court for residents of the Project and residents of The Kennedy across the alley; (ii) interior balconies would conflict with the goal of creating larger-sized units and would limit light into the east facing units; and (iii) balconies would be inconsistent with overall Project’s design intent of traditional detailing and punched windows. At the public hearing, OP conceded that the Applicant provided adequate reasons for why it would not provide additional balconies and withdrew this suggestion.
52. At the public hearing, the Applicant summarized its agreement to comply with DDOT’s two conditions. Specifically, the Applicant’s testimony and PowerPoint presentation (Ex. 20) provided the following information:
- The Applicant agreed to implement the TDM plan proposed in the Applicant’s CTR with the revisions noted by DDOT and submitted as part of the Applicant’s DDOT Response, with the revised TDM plan included at Exhibit 18; and
  - The Applicant agreed to include language in the final order allowing for flexibility in the design of the 15-foot setback area on private property comply with adjustments to DDOT’s South Capitol Street Project.
53. At the public hearing, the Applicant summarized its work with DOEE, including its responses to DOEE comments that were included in the Applicant’s Prehearing Submission.
54. At the public hearing, the Applicant summarized its extensive work with the community, including the ANC, The Kennedy, and the Church.
55. At the public hearing, the Applicant addressed the concerns and issues raised by the ANC as follows:
- Because the Subject Property and the Project are not subject to IZ requirements, the Project would not provide any required IZ units or non-required affordable housing units, which is consistent with the Zoning Regulations for the D-5 zone;
  - As requested by the ANC, the Applicant added the proposed PUDO and curbside loading zones to minimize potential traffic impacts on L Street;
  - The Applicant agreed to include a condition in the final order requiring compliance with the lighting plan for the life of the Project;
  - The Applicant agreed to include a condition in the final order requiring the provision of pet relief bags and a pet disposal system for the life of the Project; and
  - The Applicant agreed to identify for residential tenants all amenities that are included in building amenity fees, and disclose any other services that are not included in amenity fees.
56. At the public hearing, the Applicant presented the proposed improvements to the Church Property;

57. At the public hearing, the Applicant addressed the concerns and issues raised by Ms. Fascett as follows:

- The effective alley width of 20 feet is greater than DDOT's minimum width of 16 feet for two-way alley circulation and is consistent with other alleys in the District that serve similar and larger buildings and retail uses;
- The Applicant presented inbound and outbound truck turning maneuvers for the Project's loading operations, which demonstrated that the proposed 20-foot alley width would adequately accommodate truck turning maneuvers while ensuring that trucks will only make head-in/head-out maneuvers to and from public streets. The 20-foot alley width would provide clearance for vehicles to pass each other in opposing directions;
- Trucks would be able to easily maneuver into the Project's loading area using either the north-south alley exclusively or the east-west alley. If vehicles were present in the east-west alley, loading for the Project would not be impacted, nor would that loading need to impact the east-west alley. The proposed loading maneuvers are consistent with DDOT expectations for loading from an alley where back-in maneuvers are expected.
- Loading vehicles will not block alley operations for any longer than would be typical and expected within an alley that is meant to serve garage and loading access. Vehicles accessing buildings to the east of the Subject Property along the east-west alley, including The Kennedy, can exit or enter those buildings directly from Half Street, without relying on the north-south alley.
- Loading trucks accessing the Project would not require three-point turns, for both 30-foot trucks as well as for smaller trucks which will more commonly access the loading facility. Instead, truck movements only include an initial turn to orient and a single backing maneuver, which is DDOT's target goal and standard for loading within an alley and similar to a vehicle backing into a parking space. Loading vehicles serving the Project will have no need to make any three-point turns to turn around within the alley.
- With approximately 263 residential units and no planned retail uses or potential large retail component, loading for the Project will generally be limited to move-in/outs, trash and deliveries. Based on data for similar buildings without retail uses, the Project is expected to average approximately five to six delivery vehicles per day, with most residents using trucks smaller than 30-feet for moving in and out and most deliveries using delivery vans or similarly-sized vehicles, which will also be able to utilize the curbside loading zone on L Street adjacent to the package room.
- The Applicant is working with the community on traffic calming and pedestrian improvements within the alley, with such improvements and curbside changes to be reviewed and refined through public space permitting.
- Pushing the building back by 10 additional feet would result in the loss of residential square footage due to limitations on the extent that a building can cantilever above the second floor, which is typically five to seven feet. With the elimination of eight to 10 feet along the two eastern wings of the building, the resulting loss would be approximately 22 residential units as well as the reduction in size of another 22 residential units.



## 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) and 701.2(b). 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 Commission review and approval.

### DESIGN REVIEW

6. 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)**

7. The Commission concludes that the Application satisfies the applicable standards of Subtitle I § 616.7 for the M and South Capitol Streets Sub-Area because:
- Subtitle I § 616.7: The Project is setback 15 feet for its entire height and frontage from the South Capitol Street property line;
  - 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;
  - Subtitle I § 616.7(e): There are no openings adjacent to South Capitol Street that provide entrances or exits for parking and loading; and
  - Subtitle I § 616.7(f): A minimum of 75% of the streetwall on the east side of South Capitol Street is constructed on the setback line.

**GENERAL DESIGN REVIEW CRITERIA FOR D ZONES (SUBTITLE I, CHAPTER 7)**

8. 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 15 feet from its South Capitol Street property line for its entire height, with additional upper-level setbacks above 110 feet; and
    - Significantly advancing South Capitol Street as a vibrant, high-density, mixed-use corridor, as the Project will create a prominent streetwall at the ground 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 on all four building elevations;
    - Active ground floor amenity spaces that will enliven the streetscape and improve pedestrian safety and connectivity;
    - Massing, articulation, and materials that respond to the context along the South Capitol Street corridor and other nearby developments, many of which are constructed with similar materials;
    - Brick, masonry, and metal as the primary building materials, which harmonize with the immediately surrounding context, including the iconic Church to the south, the industrial vernacular of the Navy Yard, and the high-density, mixed-use buildings in the surrounding neighborhood; and
    - A strong architectural design that is responsive to the surrounding street pattern.
  - Subtitle I § 701.2(a)(3): The Project minimizes conflict between vehicles and pedestrians by:
    - Providing all parking and loading access from the public alley, which establishes a circulation pattern that maximizes uninterrupted sidewalks and landscaping and ensures the greatest amount of pedestrian and bicycle safety;

- Providing a five-foot setback along the Subject Property’s entire alley frontage to establish an effective alley width of 20 feet. This configuration provides adequate vehicular maneuverability within the alley and allows for two-way vehicular traffic, all consistent with DDOT standards;
  - Aligning the loading facilities with the east-west public alley to easily accommodate front-in and front-out truck maneuvers from public streets;
  - Proposing PUDO and curbside loading zones on L Street to minimize traffic congestion, reduce traffic back-ups, and increase pedestrian and bicycle safety; and
  - Implementing a substantial TDM plan to help reduce travel demand, and which includes “Enhanced” and “Enhanced Plus” features.
  - Subtitle I § 701.2(a)(4): The Project minimizes unarticulated blank walls adjacent to public spaces through façade articulation because it:
    - Provides extensive façade articulation and high quality building materials on both street-facing elevations and along the highly visible south elevation which can be seen from M Street, SE while providing articulation, windows and setbacks along the east elevation facing the alley and The Kennedy beyond;
    - Incorporates clear inviting windows and extensive architectural expression at the ground level;
    - Utilizes high-quality materials including brick, masonry, and metal; and
    - Incorporates significant setbacks and outdoor courts and terraces that increase visual interest and enhance the building’s overall visual aesthetic.
  - Subtitle I § 701.2(a)(5): The Project has been designed to minimize its impact on the environment because it has been designed to meet the standards of LEED-NC Gold under the v.4 LEED standard, and includes additional environmental benefits and best practices as set forth in FF No. 30.
9. The Commission concludes that the Application satisfies the applicable Design Review standards of the M and South Capitol Streets Sub-Area pursuant to Subtitle I § 701.2(b) because:
- Subtitle I § 701.2(b)(1): The massing, materials, and streetscape design of the Project will advance the establishment of South Capitol Street as a monumental civic boulevard because the Project will:
    - Create a consistent streetwall along South Capitol Street at the 15-foot setback line;
    - Provide a maximum building height of 130 feet and setbacks at 110 feet, which are consistent with the heights and setbacks of surrounding buildings;
    - Establish a strong base and monumental building design that grounds the Project and activates the adjacent public and private spaces with large ground floor storefront windows;
    - Provide extensive landscaping and improvements to the surrounding public and private spaces that enhance the pedestrian experience and aesthetic quality of South Capitol Street as an important urban boulevard;
  - Subtitle I § 701.2(b)(2): The Project recognizes the proximate residential neighborhood use and context because the building will:

- Provide a massing that respects the existing context of surrounding developments, including other 130-foot tall buildings along South Capitol Street and 110-foot tall buildings to the immediate east;
  - Maintain the strong streetwall along South Capitol Street;
  - Provide an east-facing courtyard at the third floor to increase the building's distance from The Kennedy and maximize privacy;
  - Provide all parking and loading access from the public alley to maximize safety for pedestrians and cyclists and minimize impacts on the surrounding residential neighborhood; and
  - Provide a five-foot building setback south of the Alley Easement to accommodate all vehicular movements outside of the pedestrian realm and allow for two-way vehicular circulation.
- Subtitle I § 701.2(b)(3): The view analysis provided by the Applicant shows that the Project will improve the vista toward the Capitol by strengthening the eastern edge of the view corridor with a 15-foot setback that is consistent with the setbacks of other buildings along the corridor.

**SPECIAL EXCEPTION STANDARDS (11-X DCMR § 901.2)**

10. 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 an 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 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 Capitol by adhering to the requirements of the Sub-Area. Thus, consistent with the overall intent of the Zoning Regulations, the Project creates favorable conditions related to housing, urban design, pedestrian circulation, and sustainability; and
- 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 compliant 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 space and significant streetscape improvements will further invigorate 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 the public alley, implement a substantial TDM plan, and propose PUDO and curbside loading zones on L Street will minimize potential

vehicular and pedestrian conflict and reduce reliance on private vehicles. Any potential impacts to circulation in the alley were fully addressed by the Applicant at the public hearing. *See* FF. No. 57.

- *Consistency with the Comprehensive Plan* - The Commission concludes that the Applicant has no obligation to show that the Project is consistent with the Comprehensive Plan because the applicable Design Review regulations do not impose an obligation to show that the application is consistent with the Comprehensive Plan.<sup>2</sup> The Zoning 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. Notwithstanding this conclusion, the Commission acknowledges that the Applicant submitted extensive evidence showing how the Project is not inconsistent with the Comprehensive Plan and concludes that it is not inconsistent with the Comprehensive Plan as a whole. (Ex. 13 and 13C.)
- *Affordable Housing* - The Commission concludes that the Project fully satisfies the affordable housing requirements under the IZ regulations applicable to the Property. 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 the use of penthouse habitable space pursuant to Subtitle C § 1507, which generates a requirement to make a contribution to the Housing Production Trust Fund with which the Applicant will comply.

#### **“GREAT WEIGHT” TO THE RECOMMENDATION OF OP**

11. 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).)
12. The Commission finds persuasive OP’s analysis of the Application as compliant with the requirements for the requested Design Review and concurs with OP’s recommendation to approve the Application.

#### **“GREAT WEIGHT” TO THE ANC REPORT**

1. 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,

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<sup>2</sup> The only provision in the Zoning Regulations that requires a showing that a Design Review application is not inconsistent with the Comprehensive Plan or other planning documents is found in Subtitle X, Chapter 6. It also provides that projects that are subject to Design Review due to their location with frontage on a designated street segment identified in Subtitle I, such as this one, are specifically exempted from the standards of Subtitle X, Chapter 6. *See* Subtitle X § 601.1.

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).”)

2. The Commission considered the concerns raised by the ANC and notes that the Applicant made a number of commitments in response to such concerns, including agreeing to conditions related to building lighting and pet relief. The Commission is not persuaded by the ANC’s single outstanding issue regarding affordable housing because the Applicant is not required to provide affordable housing under the Zoning Regulations, with the exception of a contribution to the Housing Production Trust Fund pursuant to Subtitle C § 1507, with which the Applicant will comply. Accordingly, the Commission has afforded great weight to the ANC but has determined to approve the Project with conditions.

## **DECISION**

In consideration of the case 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 for 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, subject to the following conditions (whenever compliance is required prior to, on, or during a certain time, the timing of the obligations is noted in **bold and underlined text**):

### A. **Project Development**.

1. The Project shall be built in accordance with the architectural plans and elevations dated October 28, 2022, and marked as Ex. 13A (the “Approved Plans”), and as further modified by the following guidelines, conditions and standards.
2. In accordance with the Approved Plans, the Project shall have:
  - 13 stories;
  - A maximum building height of 130 feet;
  - An approximate FAR of 9.3;
  - Approximately 263 residential units; and
  - Approximately 162 parking spaces on two levels of below-grade parking.
3. To maintain the primacy of the view of the U.S. Capitol, the Applicant shall not install signage or any illuminated ornament above the top of the second-floor level on the southern, western or northern building faces.
4. The Applicant shall have the flexibility with the design of the Project in the following areas:

- a. Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the plans approved by the Order;
- b. Exterior Materials - Color: To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the Order;
- c. Exterior Details - Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the plans approved by the Order. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, windows, and skylights;
- d. Ground Floor Uses: To replace the proposed ground-floor residential amenity space with retail space if retail demand along South Capitol Street increases in the future, so long as doing so does not materially impact the ground-floor façade design other than in compliance with the flexibility provided herein;
- e. Retail Entrances: If retail is provided, to locate retail entrances in accordance with the needs of retail tenants and to vary the facades as necessary;
- f. Retail Uses: If retail is provided, 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)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j));
- 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 10%;
- i. Parking Layout: To make refinements to the approved parking configuration, including layout and number of parking spaces of plus or minus 10%;
- j. 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;

- k. 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 building; (ii) the maximum overall dimensions and signage materials are consistent with the signage on the plans approved by the order; (iii) the signage is compliant with the D.C. signage regulations; and (iv) retail signage for potential ground floor retail tenants may be added at the storefront, consistent with all applicable signage regulations;
- l. Sustainable Features: To vary the approved sustainable features of the building, provided the total number of LEED points achievable for the building does not decrease below the minimum required for the LEED standard specified by the Order.
- m. Select Site Improvements: To vary the location, attributes, and general design of the site improvements located within the 15-foot setback of the Subject Property along South Capitol Street, SE, to accommodate adjustments to the streetscape design based on DDOT's South Capitol Streetscape Project

**B. REQUIREMENTS RELATED TO THE ISSUANCE OF BUILDING PERMIT**

- 1. **Prior to the issuance of a building permit**, the Applicant shall submit with its building permit application for the Project a checklist evidencing that the Project has been designed to LEED Gold standards under the LEED-NC v4 standard.

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

- 1. **Prior to the issuance of a final Certificate of Occupancy for the Project**, the Applicant shall fund the installation of the expansion of the existing First Street SE and M Street SE Capital Bikeshare (CaBi) station with a single four-dock expansion plate (or other type or location as approved by DDOT).

**D. REQUIREMENTS FOR THE LIFE OF THE PROJECT**

- 2. **For the life of the Project**, the Applicant shall:
  - a. Maintain a five-foot deep setback along the property line adjacent to the eastern alley, up to a height of 16 feet;
  - b. Install building lighting that is consistent with the lighting shown on the Approved Plans and the Lighting Plans (Ex. 13A5) and shall prohibit neon lighting on the exterior of the Project;
  - c. Provide pet relief bags in or near the residential lobby at all times; and
  - d. Provide a pet relief disposal facility attached to the building.



3. **For the life of the Project**, the Applicant shall adhere to the following TDM measures as set forth in Ex. 18, except as otherwise stated below:
- a. Unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge at least a minimum rate based on the average market rate within a quarter mile.
  - b. Identify Transportation Coordinator(s) for the planning, construction, and operations phases of development. The Transportation Coordinator(s) will act as points of contact with DDOT, goDCgo, and Zoning Enforcement and will provide their contact information to goDCgo. The Transportation Coordinators shall do the following:
    - i. Conduct an annual commuter survey of building employees and residents on-site, and report TDM activities and data collection efforts to goDCgo once per year.
    - ii. 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.
    - iii. Subscribe to goDCgo's residential newsletter and receive TDM training from goDCgo to learn about the transportation conditions for this project and available options for implementing the TDM Plan.
  - c. 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).
  - d. 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.
  - e. Post all transportation and TDM commitments on building website, publicize availability, and allow the public to see what has been promised.
  - f. Offer one (1) SmarTrip card and one (1) complimentary Capital Bikeshare coupon good for a free ride to every new resident.
  - g. Provide at least 13 short-term and 88 long-term bicycle parking spaces.
  - h. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids' bikes, with a minimum of four (4) spaces designed for longer cargo/tandem bikes (10 feet by 3 feet) for this Project. A

minimum of nine (9) spaces will be designed with electrical outlets for the charging of electric bikes and scooters. A minimum of 44 spaces will be placed horizontally on the floor. There will be no fee to the residents or employees for usage of the bicycle storage room and strollers will be permitted to be stored in the bicycle storage room.

- i. Install EV charging infrastructure for a minimum of twenty-five (25) spaces in the parking garage, with dedicated electrical capacity available for up to an additional 25 spaces.
- j. **Following the issuance of a Certificate of Occupancy for the Project**, submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case.
- k. Submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final Certificate of Occupancy for the Project) summarizing continued substantial compliance with the transportation and TDM conditions in the Order, unless no longer applicable as confirmed by DDOT. If such letter is not submitted on a timely basis, the building shall have sixty (60) days from date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter.
- l. Will not lease unused parking spaces to anyone aside from tenants of the building unless the other building(s) can demonstrate that they have no on-site parking (e.g., will not lease surplus spaces to other nearby office employees, residential buildings, or sporting attendees).
- m. Offer an annual Capital Bikeshare membership to each resident (16 years of age or older) **for the first three (3) years after the building opens**.
- n. Provide a bicycle repair station in each long-term bicycle parking storage room.
- o. Provide one (1) collapsible shopping cart (utility cart) for every 50 residential units, for a total of five (5) to encourage residents to walk to the grocery store and run errands.
- p. Offer one (1) SmarTrip card pre-loaded with \$25 to each residential unit **during the initial lease-up of the building**.
- q. Hold a transportation event for residents, employees, and members of the community **once per year for two (2) years following the opening of the building**. Examples include resident social, walking tour of local transportation options, goDCgo lobby event, transportation fair, WABA Everyday Bicycling seminar, bicycle safety/information class, bicycle repair event, etc.

- r. To encourage teleworking, provide a business center on-site and available to residents as a part of the building's amenity package 24 hours per day, 7 days per week. Access to a copier and internet services will be included, as well as both communal and private workstations.
- s. Collect parking demand and trip generation data annually for two (2) years after building opening and report this information to DDOT's Planning and Sustainability Division (PSD).
- t. Offer a carshare company the right of first offer to provide two cars for carsharing services in the parking garage. In the event there is no contract for a carshare company to utilize both reserved parking spaces, provide five (5) additional inverted U racks (10 short-term bike parking spaces) within the neighborhood.

**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 (November 17, 2022): 4-0-1** (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. 22-28 shall become final and effective upon publication in *the D.C. Register*, that is on \_\_\_\_\_.