

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-02C
Z.C. Case No. 16-02C
H&A DCU JV, LLC
(Modification of Significance of PUD @ Square 665, Lot 27)
January 13, 2022

Pursuant to notice, at its December 20, 2021 public hearing, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Modification”) of H&A DCU JV, LLC (the “Applicant”) for a modification of significance to the conditions of, and plans approved by, Z.C. Order No. 16-02 (the “Original Order”) that approved a planned unit development (“PUD”) for a portion of Lot 27 in Square 665 (“Property” or “Audi Field” or “PUD Site”).

The Commission reviewed the Modification pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Modification.

FINDINGS OF FACT

I. BACKGROUND

PRIOR APPROVALS

1. Pursuant to the Original Order, effective April 21, 2017, the Commission approved a consolidated PUD to construct Audi Field, a soccer stadium, and related site improvements, including a private First Street and a park along Potomac Avenue, S.W. (“Original Improvements”).
2. The Original Order acknowledged the future development of a vacant parcel of land known as “Parcel B” next to the Property, east of First Street and south of the Potomac Avenue Park, and like the Property also a portion of Lot 27 in Square 665. While Parcel B was not included within the boundaries of the PUD, the Commission required design review approval of Parcel B as a condition of approval of the Original Order.
3. Pursuant to Z.C. Order No. 16-02A, effective May 17, 2019, the Commission approved a Modification of Consequence to the PUD to authorize a change in materials for the screening on a portion of the stadium’s mechanical equipment.

4. Z.C. Case No. 16-02B, filed March 12, 2019, concerned a request to use Parcel B for temporary surface parking. The application was never approved and subsequently withdrawn.

PARTIES

5. The following were automatically parties to this proceeding pursuant to Subtitle Z § 403.5:
 - The Applicant; and
 - Advisory Neighborhood Commission (“ANC”) 6D in which district the Property is located and so is an “affected ANC” per Subtitle Z § 101.8.
6. The Commission received no requests for party status.

HEARING AND NOTICE

7. Pursuant to Subtitle Z § 301.6, the Applicant mailed a Notice of Intent to file the Modification on March 11, 2021, to:
 - ANC 6D; and
 - Owners of property within 200 feet of Parcel B.(Exhibit [“Ex.”] 2D.)
8. Concurrent with this Modification, the Applicant also filed an application for design review approval of Parcel B, which was reviewed by the Commission as Z.C. Case No. 16-02D (“Design Review Application”). In response to the Applicant’s request, the Commission voted 4-0-1 to consolidate the hearing on this Modification with the hearing on the Design Review Application. (Transcript [“Tr.”] from Oct. 14, 2021 meeting at pp. 86-88.)
9. Pursuant to Subtitle Z § 402, the Office of Zoning (“OZ”) sent notice of the December 20, 2021 public hearing to the following on November 2, 2021:
 - The Applicant;
 - ANC 6D;
 - ANC Commissioner 6D05, whose District includes the PUD;
 - The Office of the ANCs;
 - The Ward 6 Councilmember, whose ward includes the PUD;
 - The Office of Planning (“OP”);
 - The Department of Energy & Environment (“DOEE”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Consumer and Regulatory Affairs (“DCRA”);
 - The Office of Zoning Legal Division (“OZLD”);
 - The Chair and At-Large Members of the Council of the District of Columbia; and
 - The owners of property within 200 feet of the property included in the PUD.(Ex. 14, 15.)

10. Pursuant to Subtitle Z § 402, OZ also published notice of the December 20, 2021 public hearing in the November 5, 2021 *D.C. Register* (68 DCR 11732, *et seq.*) as well as on the calendar of the OZ website. (Ex. 13.)
11. Pursuant to Subtitle Z §§ 402.8 and 402.9, the Applicant filed an affidavit supported by photos stating that on November 7, 2021, it had posted the required notice of the public hearing. (Ex. 16.)
12. Pursuant to Subtitle Z § 402.10, the Applicant filed an affidavit attesting that it had maintained the posting of the notice on the subject property. (Ex. 21.)

II. THE APPLICATION

THE APPLICATION AND APPLICANT'S SUBMISSIONS

13. In this Modification, the Applicant proposed a series of modifications to the plans and conditions of the PUD intended to accommodate the ancillary development of Parcel B. The proposed modifications consisted of the following changes:
 - Adjustment of the boundary between the PUD and Parcel B to reflect the footprint of the proposed development of Parcel B;
 - Redesign of First Street SW and the Potomac Avenue Park;
 - Confirmation that the lot area of Parcel B (rather than all of record lot 27) would serve as the lot area for purposes of calculating the FAR of Parcel B; and
 - Approval of underground parking associated with the Parcel B development to extend under the PUD site.(Ex. 2, 2A1-2H3.)
14. In addition to the initial Modification and testimony at the public hearing, the Applicant made the following submissions to the record in support of the Modification:
 - An October 18, 2021 pre-hearing submission responding to issues raised by OP in the OP Setdown Report (Ex. 10-10B, the “Initial Pre-Hearing Submission”);
 - A November 2, 2021 Comprehensive Transportation Review (Ex. 12-12A, the “CTR”);
 - A November 30, 2021 supplemental pre-hearing submission (Ex. 18-18D, the “Supplemental Pre-Hearing Submission” and together with the Initial Pre-Hearing Submission, the “Pre-Hearing Submissions”), which included:
 - A complete Comprehensive Plan analysis including a racial equity analysis and resilience focus area analysis;
 - Revised plans reflecting changes made to First Street SW and Potomac Avenue Park;
 - Updated proposed modifications to the conditions of the Original Order; and
 - Further detailed responses to the issues raised by OP in the OP Setdown Report; and

- A December 18, 2021 hearing submission, which included updated modifications to the plans approved by the Original Order in response to ANC 6D’s comments and feedback (Ex. 22-22B3, the “Hearing Submission”).
15. On December 31, 2021, the Applicant filed draft findings of fact and conclusions of law. (Ex. 24.)

JUSTIFICATION OF RELIEF

PUD Evaluation Standards – Subtitle X § 304

16. The Applicant provided evidence that the proposed Modification would not affect the Commission’s analysis underlying the approval of the PUD for the following reasons:
- The Modification would not be inconsistent with the PUD’s designation on the Comprehensive Plan maps or elements;
 - The Modification would not seek any additional development incentives or result in any additional adverse impacts;
 - The Modification would not diminish the PUD’s proffered public benefits but instead would strengthen and further them through the improved street and park designs; and
 - The Modification would not negatively impact the original balancing test of development incentives, benefits, and impacts that led to the approval of the original PUD.
17. The Applicant provided a detailed assessment of the Modification and Design Review Application against the amended Comprehensive Plan.¹ (Ex. 18A.) With respect to the Modification, the Applicant asserted that the proposed modifications would not be inconsistent with the Comprehensive Plan maps and written elements for the following reasons:
- The reconfiguration of the boundary between the PUD and Parcel B will facilitate the development of Parcel B for a mix of high-density residential and commercial uses consistent with the PUD’s Mixed-Use High Density Residential and High Density Commercial designation on the Future Land Use Map (“FLUM”);
 - The improved Potomac Avenue Park will support the designation of Parcel B as a Neighborhood Enhancement Area on the Generalized Policy Map (“GPM”);
 - The enhanced First Street will support the designation of Audi Field as a Regional Center on the GPM;
 - The Modification will further the racial equity goals of the Comprehensive Plan by facilitating a PUD with affordable housing and family-sized units, not resulting in any displacement of existing residents or businesses, and contributing to the overall

¹ After the filing of Modification but prior to the public hearing, amendments to the maps and written elements of the Comprehensive Plan took effect on August 21, 2021. As part of the amendments, the Generalized Policy Map designation for the PUD Site “Audi Field” (not including Parcel B) was changed to “Regional Center” and also designated as a “Resilience Focus Area”; Parcel B remained a “Neighborhood Enhancement Area”, and was also designated as a “Resilience Focus Area.” As discussed in this Order, both OP and the Applicant evaluated the Modification against the amended Comprehensive Plan.

improvement of Buzzard Point and remediating past environmental harms to the area through a Voluntary Cleanup (VCP) of a contaminated Brownfield site initiated under the original PUD and cessation of former industrial activities;

- The Modification will not be inconsistent with the designation of the PUD Site and Parcel B as a Resilience Focus Area on the GPM because both the PUD and Parcel B are located outside of the 100- and 500-year floodplains and the PUD incorporates green spaces and enhanced stormwater capture capability, solar panels, and walkability which all facilitate resilience to environmental stressors;
- The improved design of the park and street spaces will further other goals of the Land Use, Transportation, Urban Design, and Anacostia Waterfront elements that call for new parks and public open spaces; and
- The Modification will facilitate a new mixed-use, mixed-income neighborhood on vacant land in Buzzard Point, including commercial space and affordable housing, with parks, amenities, and resilient design, which are on the whole not inconsistent with the goals of the Lower Anacostia Waterfront/Near Southwest Area Element and the Buzzard Point Vision Framework Plan.

(Ex. 10, 18, 18A.)

18. The Applicant provided evidence the Modification’s enhancements to the Potomac Avenue Park and First Street would also advance planning and urban design goals set forth in the Buzzard Point Vision Framework and Design Review Guide. (Ex. 2, 18.)

III. RESPONSES TO THE APPLICATION

19. OP submitted a set down report dated September 24, 2021 (the “OP Setdown Report”) recommending that the Commission set down the application for a public hearing. In so doing, OP:

- Supported the requested flexibility to base the FAR of Parcel B on the land area of Parcel B rather than record lot 27 as a whole;
- Concluded the Modification would facilitate the development of Parcel B as a mixed-use development consistent with the original PUD;
- Concluded the Modification of the PUD would not result in unacceptable impacts or a reduction in public benefits but instead would permit First Street to function as a more vibrant and pedestrian-friendly passageway and activate the Potomac Avenue Park in a meaningful way that would better serve the surrounding community;
- Concluded that the Modification would not be inconsistent with the PUD’s map designations and elements of the amended Comprehensive Plan, including the designations of the PUD as a “Regional Center” on the Generalized Policy Map and location of the PUD within a “Resilience Focus Area”; and
- Concluded that, when viewed through the racial equity lens called for in the amended Comprehensive Plan, the Modification would increase affordable housing opportunities, provide inclusive economic opportunities, and encourage a healthy neighborhood.

(Ex. 9.)

20. The OP Setdown Report also requested the following changes and/or supplemental information:
- Work with OP and OZLD to refine proposed revisions to the condition language;
 - Provide a complete Comprehensive Plan analysis under the recently-adopted amendments to the Comprehensive Plan;
 - Address the PUD’s location in a Resilience Focus Area as a part of the updated Plan analysis;
 - Provide an update on the status of efforts to fill the retail space within the stadium and southern building facing T Street SW;
 - Provide an update on the ancillary retail building at “Parcel C” located at the intersection of First and T Street, SW; and
 - Provide documentation demonstrating completion of other PUD-related park improvements.
- (Ex. 9.)
21. The Applicant provided the following responses in its Pre-Hearing Submissions to OP’s requested items:
- In response to further discussions with OP, the Applicant agreed to possible further revisions of its proposed revisions to the conditions of the Original Order;
 - The Applicant provided an evaluation of the Modification against the amended Comprehensive Plan, which was submitted into the record at Exhibit 18A;
 - The Applicant addressed the PUD’s location in a Resilience Focus Area as part of its overall amended Comprehensive Plan consistency analysis, which was submitted into the record at Exhibit 18A;
 - The Applicant discussed how its retail leasing efforts will depend on the neighborhood’s growth in residents, workers, and visitors;
 - The Applicant explained that it anticipated beginning feasibility studies for the anticipated future retail building at Parcel C in the fall of 2021 and would return to the Commission with a modification to accommodate development of Parcel C; and
 - The Applicant provided documentation and photographs showing the completion of remaining park improvements surrounding the PUD site—namely three pocket parks on the west and south sides of Audi Field.
- (Ex. 10, 18.)
22. OP submitted its hearing report (the “OP Hearing Report”) on December 10, 2021 which recommended approval of the application. In this report OP reiterated its Setdown Report findings and acknowledged that the Applicant’s Pre-Hearing Submissions had satisfactorily addressed OP’s earlier comments. OP stated that the Modification would not be inconsistent with the maps and written elements of the amended Comprehensive Plan. (Ex. 19.)
23. The OP Hearing Report included responses from other District agencies to OP’s request for comments. The District Department of Housing and Community Development and

DOEE stated they had no comments on the Modification. The District Fire and Emergency Medical Services Department stated it had no objection to the project, but urged the Applicant to ensure that all fire department access and service feature requirements are in accordance with the Fire Code Supplement of 2017 (12-H DCMR) and the International Fire Code, 2015 edition. (Ex. 19.)

24. DDOT submitted a report (the “DDOT Report”) dated December 10, 2021 evaluating both the Modification and the related Design Review Application. DDOT stated no objection to either zoning application subject to certain conditions, including implementing the Transportation Demand Plan and Loading Management Plan as proposed in the Applicant’s CTR, with the revisions and additions included at the end of the DDOT Report. (Ex. 12A, 20.) The Commission notes that the conditions were agreed to by the Applicant and incorporated into the conditions of approval for the order approving the Design Review Application (See Z.C. Order No. 16-02D; Tr. from Dec. 20, 2021 hearing at p. 31.)
25. ANC 6D did not submit a written resolution regarding the Modification. (As discussed in Z.C. Order No. 16-02D, ANC 6D submitted a written resolution stating that at its duly noticed public meeting of December 13, 2021, at which a quorum was present, ANC 6D voted 7-0-0 to support the Design Review Application.)
26. ANC 6D appeared at the public hearing and testified in support of the overall development of Parcel B pursuant to the Modification and related Design Review Application. With respect to the Modification, the ANC representative specifically praised the redesign of the Potomac Avenue Park and raised no concerns with respect to the other aspects of the Modification. (Tr. from Dec. 20, 2021 hearing at pp. 81-93.)

CONCLUSIONS OF LAW

1. Subtitle Z § 704 authorizes the Commission to review and approve Modifications of Significance to final orders of the Zoning Commission. Subtitle Z § 703.5 defines a Modification of Significance as a “modification to a contested case order or the approved plans of greater significance than a modification of consequence.” Subtitle Z § 703.6 cites examples of a Modification of Significance.
2. As set forth in Subtitle Z § 703.5, Modifications of Significance require a public hearing. Pursuant to Subtitle Z § 704.4, the scope of the hearing is limited to the impact of the modification on the subject of the original application.
3. The Commission concludes that the Applicant has satisfied the requirement of Subtitle Z § 703.13 to serve the Modification on all parties to the original proceeding, in this case ANC 6D. The Commission notes that ANC 6D testified at the public hearing in support of the Modification, but did not submit a written report to the case record.

4. The Commission concludes that the application qualifies as a Modification of Significance within the meaning of Subtitle Z §§ 703.5 and 703.6.
5. The Commission concludes that the Modification is consistent with, and improves, the PUD because it furthers the original intention of the PUD to develop First Street as a pedestrian circulation and gathering space, activate the Potomac Avenue Park, and support the Audi Field stadium use through the development of Parcel B as a mixed-use development. The Commission supports the revised design of the street and park elements as well as the modifications to the PUD/Parcel B boundaries, use of Parcel B as the “denominator” for purposes of FAR calculations, and location of underground parking that will facilitate the development of Parcel B pursuant to the Design Review Application.
6. The Commission concludes that the proposed modifications are improvements to the design of the original street and park elements and the adjustments to the Parcel B site are consistent with the massing, size, and mix of uses that were originally approved by the Commission in the Original Order.
7. The Commission concludes that the Modification will not result in unacceptable impacts that are not capable of being mitigated or otherwise adversely disturb the “balancing” of development incentives, benefits, and impacts in the PUD.
8. The Commission concludes that the Modification would not change the Commission’s analysis that the PUD is not inconsistent with the PUD’s designation on the Comprehensive Plan maps or written elements, as amended.
9. The Commission also concludes that the Modification is not inconsistent with the Comprehensive Plan when evaluated through a racial equity lens. As the Applicant’s Pre-Hearing Submissions and OP reports highlighted, the Modification will further the development of Parcel B and will result in a mixed-use development providing affordable housing, job creation, and ground floor commercial development. In addition, the Modification will result in public space improvements and amenities that directly benefit the community as well as the finalization of the Voluntary Cleanup (VCP) of Buzzard Point. Accordingly, the Commission finds that the Modification advances racial equity and is not inconsistent with the Comprehensive Plan.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

10. Pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).
11. The Commission notes OP’s recommendation that the Commission approve the Modification and therefore concurs in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

12. 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)) and Subtitle Z § 406.2, the Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANCs. To satisfy this great weight requirement, District agencies 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. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted).)
13. The Commission finds that ANC 6D did not submit a “written report” in this matter and so accordingly no “great weight” can be given to the ANC’s statements regarding the Modification at the public hearing. Nevertheless, the Commission notes that ANC 6D’s testimony regarding the project as a whole was in support, ANC 6D specifically stated support for the Potomac Avenue Park design, and ANC 6D did not articulate any issues or concerns regarding the other elements of the Modification.

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’s request for a Modification of Significance to modify Condition Nos. A.1, A.5, B.3, and D.2 of Z.C. Order No. 16-02, and the plans it approved, to read as follows. All other conditions in Z.C. Order No. 16-02, as modified by Z.C. Order No. 16-02A, remain unchanged and in effect.

Condition A.1 of the Original Order is revised as follows (new language **bold/underlined**):

- A.1 The Project shall be developed in accordance with the plans marked as Exhibit 37B, as modified by the plans marked as Exhibit 97F of the record (including the signage plan marked as Sheets 22-34 of Exhibit 97F), and as modified by guidelines, conditions, and standards herein (collectively, the “Plans”); **provided, however, that in the event that the development of Parcel B proceeds pursuant to Z.C. Order No. 16-02D (“Parcel B Project”), the plans dated November 29, 2021 marked as Exhibit 18D1-D2 in the record of Z.C. Case No. 16-02C, as modified by the plans dated December 17, 2021 marked as Exhibit 22A of the record of Z.C. Case No. 16-02C (“Revised Plans”) shall supersede the corresponding sheets in the Plans, the Revised Plans shall thereafter be deemed part of the Plans, and the Revised Plans shall be subject to the flexibility in Condition A.6. hereof. . . .**

Condition A.5 of the Original Order is revised as follows (new language **bold/underlined**):

- A.5 The Applicant is granted the flexibility to provide no parking spaces on-site instead of the 1,450 parking spaces required by § 2101.1; and provide two service and two delivery spaces instead of the 30- and 55-foot loading berths and 100- and 200-square-foot loading platforms required by § 2201.1; **provided, however, a parking garage associated with the Parcel B Project shall be permitted to extend into the PUD site as shown on the Revised Plans.**

Condition B.3 of the Original Order is revised as follows (new language **bold/underlined**):

- B.3 Prior to the issuance of a Certificate of Occupancy (**except as noted below**), the Applicant shall develop the public parks and plazas, and the new First Street, as follows:

- a. The area to the northeast of the stadium along Potomac Avenue extending from Half Street shall include a landscaped public park and an open space/entry plaza for walking and gathering, in accordance with Sheets 2.04 and 2.08-2.12 of the Plans; **provided, however, that in the event that the Parcel B Project proceeds pursuant to Z.C. Order No. 16-02D, Sheets 10, 12-16, and 20-22 of the Revised Plans dated November 29, 2021 as modified by Sheets 1-4 and 19 of the Revised Plans dated December 17, 2021, shall supersede Sheets 2.04 and 2.08-2.12 of the Plans, such Revised Plans shall thereafter be deemed part of the Plans, and the improvements shown on such Sheets of the Revised Plans shall be completed prior to the issuance of the final certificate of occupancy for the Parcel B Project;**

...

- d. A new 1st Street along the east side of the stadium, running from Potomac Avenue to T Street. This new 1st Street shall be a private street open to the public, except when it is closed for an event. It shall contain two traffic lanes, curbside parking, and sidewalks. The sidewalks between the street and the retail storefronts shall be wide space to allow gathering and outdoor seating for the retail. The streetscape design elements for this street will mimic those of the public streets surrounding the Property, and shall be in accordance with Sheets 2.03-2.04 of the Plans; **provided, however, that in the event that the Parcel B Project proceeds pursuant to Z.C. Order No. 16-02D, Sheets 10, 17-19, and 21-22 of the Revised Plans dated November 29, 2021, shall supersede Sheets 2.03-2.04 of the Plans, such Revised Plans shall thereafter be deemed part of the Plans, and the improvements shown on such Sheets of the Revised Plans shall be**

completed prior to the issuance of the final certificate of occupancy for the Parcel B Project.

Condition D.2 of the Original Order is revised as follows (additions are shown **bold/underlined** and deletions in ~~strike~~through):

D.2 The Applicant (or another party, as applicable) shall be required to apply to the Commission for design review and approval for the development of the ancillary Parcel B, the development parcel east of First Street, S.W. between the new public park and S Street, S.W. and as indicated in ~~Exhibit 37B of the record~~ **on Sheet 5 of Exhibit 18D1 in the record of Z.C. Case No. 16-02C. The maximum FAR permitted for the Parcel B Project shall be determined by dividing the gross floor area of the Parcel B Project by the area of Parcel B (that is, a lot area of 62,147 square feet).**

VOTE (January 13, 2022): 5-0-0 (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Joseph S. Imamura to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 16-02C shall become final and effective upon publication in the *D.C. Register*; that is, on July 1, 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-02D
Z.C. Case No. 16-02D
H&A DCU JV, LLC
(Parcel B Design Review @ Square 665, Lot 27)
January 13, 2022

Pursuant to notice, at its December 20, 2021 public hearing, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of H&A DCU JV, LLC (“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):

- Design review approval pursuant to Subtitle K, Chapter 5 and Subtitle X, Chapter 6, with flexibility from the preferred use requirements in Subtitle K, Section 509;
- The guardrail setback requirements in Subtitle C, Section 1500;¹ and
- Special exception approval pursuant to Subtitle U, Section 518.1(c) for a bowling alley use.

Said relief is requested for a portion of Lot 27 in Square 665 (“Parcel B” or “Property”) to construct a new mixed-use building containing a mix of retail, entertainment, office, and residential use (“Project”) in the CG-4 zone on land adjacent to Audi Field. The Commission conducted the public hearing in accordance with Subtitle Z. For the reasons below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PRIOR APPROVALS

1. Pursuant to Z.C. Order No. 16-02 (“Original Order”), effective April 21, 2017, the Commission approved a consolidated PUD for a portion of Lot 27 in Square 665 to construct Audi Field, a soccer stadium, and related site improvements, including a private First Street and a park along Potomac Avenue, S.W. The Original Order acknowledged the

¹ Subsequent to the public hearing but prior to the Commission taking final action on January 13, 2022, the Commission’s amendment to the roof structure and penthouse regulations pursuant to Z.C. Order No. 14-13E took effect (on December 24, 2021) and eliminated the guardrail requirement for lower roof terraces pursuant to Subtitle C § 1504.2(e), thus eliminating the need for such flexibility in this case.

future development of a vacant parcel of land known as “Parcel B” next to the PUD site, east of First Street and south of the Potomac Avenue Park; Parcel B is also located on a portion of Lot 27 in Square 665. While Parcel B was not included within the boundaries of the PUD, the Commission required design review approval of Parcel B as a condition of approval of the Original Order.²

2. Pursuant to Z.C. Order No. 16-02A, effective May 17, 2019, the Commission approved a Modification of Consequence to the PUD to authorize a change in materials for the screening on a portion of the stadium’s mechanical equipment.
3. Z.C. Case No. 16-02B, filed March 12, 2019, concerned a request to use Parcel B for temporary surface parking. The application was never approved and subsequently withdrawn.

PARTIES

4. The following were automatically parties to this proceeding pursuant to Subtitle Z § 403.5:
 - The Applicant; and
 - Advisory Neighborhood Commission 6D (“ANC 6D”), in which Parcel B is located and so is an “affected ANC” per Subtitle Z § 101.8.
5. The Commission received no requests for party status.

HEARING AND NOTICE

6. Pursuant to Subtitle Z § 301.6, the Applicant mailed a Notice of Intent to file the Application on March 11, 2021 to:
 - ANC 6D; and
 - Owners of property within 200 feet of Parcel B.
(Exhibit [“Ex.”] 2D.)
7. Concurrent with this Application, the Applicant also filed an application for a modification of the PUD to accommodate the development of Parcel B, which was reviewed by the Commission as Z.C. Case No. 16-02C (“PUD Modification”). In response to the Applicant’s request, the Commission voted 4-0-1 to consolidate the hearing on the PUD Modification with the hearing on this Application. (Transcript [“Tr.”] from Oct. 14, 2021 meeting at pp. 86-88.)
8. Pursuant to Subtitle Z § 402, on November 2, 2021 the Office of Zoning (“OZ”) sent notice of the December 20, 2021 public hearing to:
 - The Applicant;
 - ANC 6D;

² This case, Z.C. Case No. 16-02D, is the design review application for Parcel B, and it is proceeding as though the design review required in the Original Order is the design review required for certain properties in CG zones pursuant to Subtitle K, Section 512. However, technically Parcel B is not subject to the CG zone design review requirements of Subtitle K, Section 512. Therefore, the Commission’s evaluation of this application as a required CG design review is a higher standard of review with more evaluation criteria than a strictly voluntary design review.

- ANC 6D05 Single Member District Commissioner, whose district includes Parcel B;
 - The Office of the ANCs;
 - Ward 6 Councilmember, whose district includes Parcel B;
 - The Chair and At-Large members of the D.C. Council;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Consumer and Regulatory Affairs (“DCRA”);
 - The Office of Zoning Legal Division (“OZLD”);
 - The Department of Energy & Environment; and
 - Owners of property within 200 feet of Parcel B.
- (Ex. 6-7.)
9. Pursuant to Subtitle Z § 402, OZ also published the public hearing notice in the November 5, 2021 *D.C. Register* (68 DCR 11736, *et seq.*) as well as on the calendar on OZ’s website. (Ex. 5-7.)
 10. Pursuant to Subtitle Z §§ 402.8 and 402.9, the Applicant filed an affidavit supported by photos stating that on November 7, 2021, it had posted the required notice of the public hearing. (Ex. 8.)
 11. Pursuant to Subtitle Z § 402.10, the Applicant filed an affidavit attesting that it had maintained the posting of the notice on the Property. (Ex. 12.)

THE PROPERTY

12. Parcel B is located in the Buzzard Point neighborhood of Southwest DC and is bounded by Half Street, S.W. to the east, S Street, S.W. to the south, First Street, S.W. to the west, and a park that fronts on Potomac Avenue, S.W. to the north. Immediately to the west, across First Street SW, is Audi Field. Audi Field, First Street, and the Potomac Avenue Park are all privately owned and located on the Audi Field PUD site. (Ex. 2A2.)
13. Parcel B consists of approximately 62,147 square feet of land area and is located on the same lot of record as the Audi Field PUD site, lot 27. (Ex. 2A2.)
14. To the south of Parcel B, across S Street, S.W., is a PEPCO facility that occupies nearly three full city blocks. Land to the east of Parcel B is in various stages of redevelopment. (Ex. 2A2.)
15. Entrances to the Navy Yard and Waterfront Metrorail stations are located within one mile of Parcel B. The Property is also served by the Metrobus 74 line. (Ex. 2A2.)
16. Parcel B is currently vacant. (Ex. 2A2.)

ZONING

17. Parcel B is located in the CG-4 zone. The CG zones are intended to assure development “with a mixture of residential and commercial uses, and a suitable height, bulk, and design

of buildings as generally indicated in the Comprehensive Plan and recommended by planning studies of the area” and encourage a “variety of support and visitor-related uses, such as retail, service, entertainment, cultural, and hotel uses.” (Subtitle K § 500.1.) The CG-4 zone is intended to permit “medium- to high-density mixed-use development,” “encourage provision of active pedestrian-oriented streets with active ground floor uses,” and “promote pedestrian safety by separating pedestrian and vehicular circulation patterns.” (Subtitle K § 504.1.)

18. The CG-4 zone permits a maximum floor area ratio (“FAR”) of 8.2 inclusive of the Inclusionary Zoning and residential density bonuses, with a maximum FAR of 3.0 for nonresidential use. (Subtitle K § 504.3.) Pursuant to the PUD Modification, the FAR for Parcel B is calculated based on the area of Parcel B. (Z.C. Order No. 16-02C.) The CG-4 zone permits a maximum height of 130 feet for projects that trigger the residential density bonus. (Subtitle K § 504.4.)

COMPREHENSIVE PLAN (TITLE 10A OF THE DCMR, THE “PLAN”)

19. The Plan’s Future Land Use Map (“FLUM”) designates Parcel B as Mixed-Use High Density Residential / High Density Commercial, which allows for mixed office/retail buildings and high density residential uses, all with a FAR above 6.0. (Plan § 227.8, 227.13.)
20. The Plan’s Generalized Policy Map (“GPM”) includes Parcel B in a “Neighborhood Enhancement Area,” which are “neighborhoods with substantial amounts of vacant and underutilized land.” New development should “respond to the existing character” and “[n]ew housing [is] encouraged to improve the neighborhood.” New development must be consistent with the FLUM. (Plan § 225.6, 225.7.)
21. The Plan’s Lower Anacostia Waterfront/Near Southwest Area Element includes Parcel B. Parcel B is also subject to the Buzzard Point Vision Framework and Design Review Guide (“Buzzard Point Guide”). In addition, the Plan designates Buzzard Point and therefore Parcel B as a Resilience Focus Area.

II. THE APPLICATION

THE PROJECT

22. The Applicant proposed the Project to have:
 - A maximum height of 130 feet plus a habitable penthouse;
 - Approximately 508,298 square feet of gross floor area (“GFA”), plus a habitable penthouse, for a total FAR of 8.18 based on the area of Parcel B;
 - Approximately 455 residential units, of which 138 (30%) are affordable at either 30%, 50%, or 60% of the Median Family Income (“MFI”), and of which 110 are reserved for seniors;
 - Approximately 41,043 square feet of office use, which is planned as the new national headquarters of Volunteers of America National Services (“VOANS”), which will also operate the senior housing component of the Project;

- Approximately 39,661 square feet of entertainment use;
 - Approximately 10,790 square feet of retail/restaurant use; and
 - Approximately 305 vehicular parking spaces, approximately 178 long-term bicycle parking spaces, and approximately 38 short-term bicycle parking spaces.
- (Ex. 2A2; Ex. 2I1; Ex. 9A; Ex. 9F1.)

APPLICANT’S SUBMISSIONS

23. In addition to the testimony at the public hearing, the Applicant made the following submissions to the record in support of the Application:
- The initial July 15, 2021 application and related materials requesting design review approval, special exception approval for a bowling alley, and related relief; (Ex. 2-2I4.)
 - A November 2, 2021 Comprehensive Transportation Review (Ex. 4-4A, the “CTR”);
 - A November 30, 2021 supplemental pre-hearing submission (Ex. 9-9F5, the “Pre-Hearing Submission”), which included a complete Comprehensive Plan analysis, a complete updated set of plans for the Project, and proposed conditions of approval;
 - A December 18, 2021 hearing submission (Ex. 14-14C3, the “Hearing Submission”), which included updated modifications to the plans and updated proposed conditions of approval; and
 - A December 31, 2021 post-hearing submission (Ex. 16-16B, the “Post-Hearing Submission”), which included revised alley drawings requested by the Commission.
24. On December 31, 2021, the Applicant filed draft findings of fact and conclusions of law. (Ex. 16B.)

RELIEF REQUESTED

25. The Applicant requested:
- Design review approval of the Project, including flexibility from the preferred use requirement of Subtitle K § 509.3(b);
 - The guardrail setback requirement of Subtitle C Chapter 15 for the lower roof terraces;³ and
 - Special exception approval pursuant to Subtitle U § 518.1(c) to approve a bowling alley use.
- (Ex. 2A2.)
26. The Applicant also requested:
- Design flexibility to refine plans consistent with the design flexibility granted by the Commission in other design review cases;
 - To allow specified “preferred uses” in the CG-4 zone for the spaces identified on the plans as “retail” or “entertainment” uses as well as flexibility to modify the ground-

³ Subsequent to the public hearing but prior to the Commission taking final action on January 13, 2022, the Commission’s amendment to the roof structure and penthouse regulations pursuant to Z.C Order No. 14-13E took effect (on December 24, 2021) and eliminated the guardrail requirement for lower roof terraces pursuant to Subtitle C § 1504.2(e), thus eliminating the need for such flexibility in this case.

- floor frontage and streetscape for the Half Street SW frontage of the south podium if such use is changed from “entertainment” to other preferred uses; and
- To vary the sustainable features of the Project provided it achieves LEED Gold v4 certification.
- (Ex. 9C; Ex. 14B.)

APPLICANT’S JUSTIFICATION

CG Specific Design Review (Subtitle K § 512.3) and General Design Review Urban Design Criteria (Subtitle X § 604.7)

27. CG Zone Purposes (K § 512.3(a)). The Project’s overall height, density, and mix of residential and nonresidential uses advance the overall goals of the CG zones and are consistent with Parcel B’s FLUM designation. In addition, the Project devotes its ground floor to the types of visitor-related retail, food & beverage, and entertainment uses specifically called for in the CG zones. Further, the orientation and organization of the south podium to accommodate the footprint of the entertainment use—and the resulting site access and street-level conditions—all serve to further the CG goals for visitor-generating entertainment use. In a similar vein, the Project’s accommodation of the 30-foot wide PEPCO easement along Half Street SW furthers the CG goal for allowing the continuation of ongoing industrial use at Buzzard Point. (Ex. 2A2, 9.)
28. Desired Use Mix (K § 512.3(b), X § 604.7(b)). The Project provides the multifamily residential, entertainment, retail and eating/drinking establishment uses identified as preferred uses in Subtitle K § 512.3(b). The Project also creates multiple publicly-accessible parks and open spaces in an emerging neighborhood lacking in such spaces. (Ex. 2A2, 9.)
29. Context with the Surrounding Neighborhood and Street Patterns (11-K DCMR § 512.3(c), 11-X DCMR § 604.7(c)). The Project’s overall massing and ground-floor design respond to not only the adjacent Audi Field but also the axial connection to the South Capitol Street oval and Nationals Ballpark along Potomac Avenue, the S Street SW connection to the Anacostia Waterfront, and the intent for Half Street SW to serve as the central spine of the new Buzzard Point neighborhood. (Ex. 2A2, 9.)
30. Minimize Pedestrian and Vehicular Conflicts (11-K DCMR § 512.3(d), 11-X DCMR § 604.7(a) & (f)). The Project minimizes conflicts between pedestrians and vehicles. Pedestrian entrances to the residential and office components of the Project are focused on Half Street, S.W., while the vehicular garage entrance is located on S Street SW, which is expected to have the lowest volume of pedestrian traffic. Loading has been located on the private First Street and the private alley, so that back-in movements do not take place in the public right of way; moreover, vehicular access to these loading areas (and indeed First Street and the alley itself), will be closed on gamedays to accommodate gameday crowds and ensure pedestrian safety. The curbless design of First Street and the alley will also enhance pedestrian safety as well as maintain porosity and connectivity through the large privately-controlled lot. (Ex. 2A2, 9, 16.)

31. Minimize Unarticulated Blank Walls Adjacent to Public Spaces (11-K DCMR § 512.3(e), 11-X DCMR § 604.7(a) & (d)). The Project features highly-articulated ground-level facades along First Street and Potomac Avenue, S.W., including multiple entrances, clear glass storefronts, and street-activating signage and sidewalk cafes. These features wrap around the north podium to Half Street, S.W., concluding at the apartment lobby component which is also characterized by unique materials and window design. While the Project includes blank walls along the portions of the south podium’s Half Street, S.W. and S Street, S.W. frontages—necessary design features to accommodate the south podium’s preferred uses—these walls have been transformed into an asset, serving as a backdrop for enhanced public park and gathering spaces and accommodating public art through murals and lighting that will create visual interest and further public safety. On upper stories, the massing, materials, and fenestration all serve to articulate the building and reduce its apparent mass. (Ex. 2A2, 9, 14, 16.)
32. Minimize Environmental Impact (K § 512.3(f), X § 604.7(e)). The Project is designed to a minimum of LEED Gold, achieves the enhanced stormwater management criteria called for in the Anacostia Waterfront Development Zone, incorporates energy-efficient design features including a fully-electric residential design and a minimum of 4,000 square feet of photo-voltaic panels, and effectuates a voluntary cleanup of Parcel B, all of which will achieve sustainability and environmental goals to minimize adverse environmental impact. (Ex. 2A2, 9, 14.)

General Design Review (Subtitle X § 604)

33. Comprehensive Plan and Buzzard Point Guide Consistency (11-X DCMR § 604.5). The Project is, on balance, not inconsistent with the Plan as a whole and the Guide, and in fact furthers many goals and policies of the Plan and Guide. Specifically:
- *Maps*: The height, density, and mix of uses are consistent with the Property’s FLUM and GPM designations. The entertainment and office uses are also consistent with the Regional Center designation for the adjacent Audi Field;
 - *Resilience Focus Area*: The Project is located outside the 500-year floodplain but includes many features to further increase its resiliency against climate change, including improved green spaces, enhanced stormwater retention targets, and energy-efficient design features such as solar panels and EV charging stations;
 - *Racial Equity Lens*: The Project reserves 30% of its residential units as affordable housing for households earning 60% MFI or less, including 2-bedroom with den and 3-bedroom units in the apartment building and 110 units reserved for seniors at 30% and 50% MFI, which furthers goals for maintaining affordable housing opportunities in amenity-rich neighborhoods without causing any direct displacement of existing residents or local businesses. The Project also includes multiple nonresidential uses that will create opportunities for new jobs at a variety of skill sets and redresses past environmental activity that disproportionately affected nearby low-income and Black neighbors. Finally, the Project includes new public parks and open spaces that will serve existing as well as new residents;
 - *District Elements*: The Project advances multiple elements of the Land Use, Transportation, Housing, Environmental, Economic Development, Urban Design,

Historic Preservation, Community Services and Health Care, Arts and Culture, Infrastructure, and Implementation Elements. The Application is not at all inconsistent with the Land Use Element and to the extent it is inconsistent with certain goals of the other District Elements, such inconsistencies are modest and are outweighed by the Project's overall consistency with the Plan as a whole; and

- *Area Element and Buzzard Point Guide*: The Project helps implement the Lower Anacostia Waterfront/Near Southwest Area Element's goals to develop Buzzard Point as a mixed-use, mixed-income neighborhood with parks, amenities, and resilient design. The Project also advances the five urban design principles of the Guide through bold, resilient design, active street-level activation and connections, and meaningful new amounts of public open spaces and parks.

(Ex. 2A2, 9, 9B.)

34. Special Exception Criteria (11-X DCMR § 604.6). The Project satisfies both prongs of the special exception test as follows:

- *Will Not Tend to Adversely Affect the Use of Neighboring Property*. The design and use of the Project fits seamlessly into the surrounding context and will not adversely affect either existing uses (Audi Field and the PEPCO facility) or new development on underdeveloped property across Half Street SW. Indeed, multiple specific design features—the curbless First Street, the enhanced Potomac Avenue Park, the Half Street SW setback to accommodate the PEPCO easement—will positively affect the use of neighboring properties. Other aspects of the Project, such as the large amounts of affordable housing and the senior housing use paired with the anticipated VOANS office headquarters, will positively impact the broader Southwest and Buzzard Point neighborhood; and
- *In Harmony with the Zoning Regulations and Maps*. The Project complies with the Zoning Regulations and Maps in all material respects, including building height, density, lot occupancy, and other dimensional features. Even the minor zoning flexibility from the preferred use requirements maintains the amount of preferred use, but just shifts the location to accommodate the residential lobby entrance.

(Ex. 2A2, 9.)

35. Urban Design Criteria (X §§ 604.7 & 604.8). In addition to the specific urban design criteria of the CG zone, the Project also advances the broader urban design criteria applicable to all design review cases, as discussed above, in a manner that is superior to matter of right design in all material respects. (Ex. 2A2, 9, 14, 16.)

Design Review Flexibility (Subtitle X § 603.1)

36. Subtitle K § 509 requires buildings with frontage along Potomac Avenue SW to provide one or more preferred uses, which include retail, eating and drinking establishments, and entertainment and performing arts uses, on the ground floor for a minimum depth of 75 feet from the building's Potomac Avenue frontage for 100% of such frontage excluding only building entrances or fire control areas. The Applicant requests flexibility from the 75 foot depth requirement set forth in Subtitle K § 509.3(b) because the rear portion of the

Project's residential lobby protrudes into the 75-foot depth required for the preferred use area. (Ex. 2A2, 2I1, 9F1.)

37. The Applicant justified its flexibility from the preferred use area 75-foot depth requirement by explaining that the north podium's ground floor devotes to preferred uses the entire frontage along Potomac Avenue, S.W. and, on the whole, provides the amount of gross floor area required for preferred uses. Furthermore, the portion of the building that projects into the 75-foot preferred use depth is the residential lobby and entrance, which would be permitted by right were the entrance located on Potomac Avenue, S.W. rather than Half Street, S.W. (Ex. 2A2, 9.)

Special Exception for a Bowling Alley (Subtitle U § 518.1(c) and Subtitle X § 901.2)

38. The bowling alley use satisfies the specific special exception criteria under Subtitle U § 518.1:
- The Project is greater than 25 feet from any residentially-zoned property; and
 - There is no adjoining property from which soundproofing is required, and the nearby properties to the west and south are used as a soccer stadium and a utility plant. Property to the east is separated by not only the Half Street, S.W. right-of-way but also the 30-foot easement area. Within the Project itself, the bowling alley use is separated from the residential floors by the office levels and, furthermore, the Applicant indicated that it would use the same sound engineer that had been used to design a music venue in a similar mixed-use project.
- (Ex. 2A2; Ex. 9.)
39. The bowling alley use also satisfies the general special exception criteria under Subtitle X § 901.2:
- *Will Not Tend to Adversely Affect the Use of Neighboring Property.* As noted above, there are no immediately adjacent uses, and the existing nearby uses are either unaffected by noise or sufficiently separated by the surrounding street grid. Even within the Project, physical separation as well as design measures will be implemented to avoid adverse noise impacts; and
 - *In Harmony with the Zoning Regulations and Maps.* A bowling alley is the type of "visitor-related" entertainment use specifically encouraged in the CG-4 zone; entertainment uses are also specifically included in the list of "preferred uses" for the CG-4 zone.
- (Ex. 2A2, 9.)

III. RESPONSES TO THE APPLICATION

OP

40. OP submitted a report dated December 10, 2021 (Ex. 10, "OP Report") that recommended approval of the design review application, including the special exception relief for bowling alley use and flexibility from the preferred use requirements. OP evaluated the Application against the general design review criteria set forth in Subtitle X § 601 through 604 as well as against the CG-specific design review criteria in Subtitle K § 512. OP also

provided a detailed evaluation of the Project against the Plan, including through a racial equity lens, and concluded that the Project was not inconsistent with the Plan. OP determined that the Application would advance racial equity by facilitating a mixed-use development that will provide affordable housing, office space with accompanying job opportunities and services for the local community, and ground floor commercial development without any direct displacement of existing residents or businesses. The Project would also result in the completion of the Voluntary Cleanup (VCP) of Buzzard Point and improve the long-term health outcomes of neighborhood residents.

41. The OP report included three recommendations, which the Applicant addressed at the public hearing. (Ex. 10.) Each recommendation, and the Applicant's response, is discussed below.
- *Recommendation 1: Ensure the S Street SW façade is activated and creates a safe, pedestrian-friendly environment.* The Applicant explained that the S Street, S.W. façade is designed as proposed because of (a) space needs for the entertainment use, (b) the importance of co-locating the south podium loading with the senior building/office vertical core, which results in (c) the proposed location and orientation of the parking garage entrance. To address OP's comment, the Applicant proposed the addition of sculptural lighting elements on the south façade to supplement the pedestrian-focused landscaping and amenities as well as create visual interest and enhance pedestrian safety; (Ex. 14,14A (Sheet 5).)
 - *Recommendation 2: Provide additional renderings regarding the Half Street, S.W. mural as well as detail on the process for identifying the mural artist.* At the hearing, the Applicant provided additional drawings showing the mural in context and articulated the process it proposed to use to select a local artist to design the mural. The Applicant agreed as a condition of approval to select the local artist through a "Request for Proposals" process in consultation with ANC 6D; and (Ex. 14, 14A (Sheets 6-7), 14B; Tr. from Dec. 20, 2021 hearing at p. 31.)
 - *Recommendation 3: Consider eliminating the on-site combustion of fossil fuels, implementing net-zero energy construction, and maximizing solar energy production.* The Applicant agreed to install a minimum of 4,000 square feet of solar panels on the Project and explained that the residential portion of the building would be fully electric, each of which furthered the sustainability goals encouraged by OP. (Ex. 14; 14A (Sheet 20), 14B.)
42. At the hearing, OP testified in support of the Application and confirmed that the Applicant's responses satisfactorily addressed OP's recommendations. (Tr. from Dec. 20, 2021 hearing at pp. 75-76.)

DDOT

43. DDOT submitted a report dated December 10, 2021 (Ex. 11, "DDOT Report") that recommended approval of the design review application subject to three conditions discussed below.
- DDOT expressed support for the proposed site access locations, provided that the Applicant agreed to the following: (1) prior to the issuance of a building permit for

Parcel B, coordinate with DDOT on the Audi Field Transportation Operations and Parking Plan (“TOPP”) to ensure Parcel B’s needs are considered in the next TOPP update and (2) implement the proposed Loading Management Plan (“LMP”) in the Applicant’s November 2, 2021 CTR; and (Ex. 4A.)

- DDOT found that the Applicant’s CTR utilized sound methodology and assumptions and concluded that the Applicant’s Transportation Demand Management Plan (“TDM Plan”) would offset the impacts of the Project provided (3) the TDM proposed in the Applicant’s November 2, 2021 CTR (Ex. 4A) was supplemented with revisions and additions recommended at the end of DDOT’s Report.

44. In its Hearing Submission, the Applicant submitted revised proposed conditions of approval that integrated all three of DDOT’s recommendations. (Ex. 14B.)
45. At the hearing, DDOT testified in support of the Application and confirmed that the Applicant’s responses satisfactorily addressed DDOT’s recommendations. (Tr. from Dec. 20, 2021 hearing at p. 79.)

ANC

46. ANC 6D submitted a report dated December 17, 2021 (Ex. 13, “ANC Report”) stating that, at a duly noticed public meeting on December 13, 2021, with a quorum present, ANC 6D voted to support the Application. ANC 6D articulated two clear benefits resulting from the Project: (1) its significant amount of affordable housing, particularly for seniors, which would further the ANC’s goals to allow seniors to age in place and maintain the iconic diversity that defines the community, and (2) its significant new greenspaces at the Potomac Avenue Park and along Half Street, S.W.
47. The ANC Report also articulated several issues for further consideration. Each issue, and the Applicant’s response, is addressed below.
 - *Senior Housing—Design and Services.* ANC 6D requested additional detail regarding the design of the senior housing units as well as the services that would be provided in the senior housing building for residents. In response, the Applicant agreed to a detailed list of accessibility and universal design elements that would be incorporated into the design of the senior housing component of the Project. (Ex. 14A, Sheet 11; Ex.14B.) The Applicant also provided written evidence and testimony regarding the types of staffing and services that are expected be provided by VOANS; such staffing and services are expected to evolve over the life of the Project to accommodate the needs of the senior residential community; (Ex. 9, 14; Tr. from Dec. 20, 2021 hearing at pp. 72-73.)
 - *Senior Housing—Additional Communal Space for Seniors and Unit Size.* ANC 6D requested consideration of additional communal space for seniors as well as whether larger unit sizes might be appropriate. In response, the Applicant increased the amount of communal space for seniors, adding both indoor and outdoor space on the ground floor and fourth floors to supplement the primary indoor and outdoor communal spaces at the top floor. (Ex. 14A, Sheets 9-10.) At the hearing, representatives for VOANS affirmed that the proposed amenities were consistent with other VOANS projects and

- would include flexible space to accommodate a variety of active and passive recreation activities. VOANS also explained that the size of the senior housing units were “above average” compared to the market; (Tr. from Dec. 20, 2021 hearing at pp. 28; 98-100.)
- *Senior Housing—Balconies.* ANC 6D requested the Applicant reconsider the removal of balconies from the senior housing component. In written submissions by the Applicant and as reiterated by VOANS at the hearing, VOANS could not incorporate balconies into the senior housing building for safety reasons but incorporated other communal outdoor spaces for senior residents that, as spaces for congregation and socialization, would better serve resident needs; (Ex. 9, 14; Tr. from Dec. 20, 2021 hearing at pp. 63-64; 71-72.)
 - *Duration of Senior Affordable Housing.* ANC 6D requested more information regarding the duration of the senior housing affordability. In response, the Applicant confirmed that the Project would reserve 30% of the units as affordable housing for a minimum of 50 years, with further extension of the all-affordable senior housing component possible but dependent on future financial subsidy mechanisms; (Ex. 9, 14.)
 - *Final Design of Potomac Avenue Park.* ANC 6D requested, and the Applicant agreed, that the final design of the park align with the version that was reviewed and supported by ANC 6D; (Ex. 14A, Sheets 1-4.)
 - *ANC 6D Input on the Half Street SW Mural and Green Space Design.* In response to ANC 6D’s request, the Applicant agreed to provide ANC 6D with an opportunity to advise on the mural artist selection and testified that it expected to continue to work with ANC 6D representatives on the final design of the Half Street Park; (Ex. 14, 14B.)
 - *Commitments Regarding Environmental Remediation.* In response to ANC 6D’s request, the Applicant agreed to undertake the environmental remediation and air quality monitoring measures requested by the ANC; (Ex. 14, 14B.)
 - *Entertainment Use Commitments.* ANC 6D requested details on the interior design of the entertainment use space as well as how the operation would be made attractive to a broad demographic. The Applicant responded that this level of detail regarding interior design and use is not germane to a design review case but testified that it will consider broad multi-generational appeal when evaluating tenants for the entertainment space; (Ex. 14.)
 - *Retail Use Commitments.* ANC 6D requested the Applicant commit to reserve 1,700 SF of space in the Project for a “neighborhood-serving” option preselected by the ANC. The Applicant responded that forecasted leasing conditions as well as competing goals to use the ground-floor space in the Project to activate the street and draw visitors precluded such commitment but agreed to consider the types of local service uses recommended by the ANC; (Ex. 14.)
 - *Senior Housing Parking.* ANC 6D requested the Applicant agree to reserve parking for senior housing residents and their caregivers. In response, the Applicant agreed to set aside a minimum of 20 spaces for senior residents in the garage (to be located near the elevators to the senior housing component) and reserve a minimum of 5 spaces for caregivers during daytime hours on weekdays, which is the time when such need is in most demand. (Ex. 14B.) The Applicant also detailed the other off-site transportation services that would be available to seniors as well as on-site services that would make travel unnecessary. (Ex. 9, 14.) At the hearing, VOANS also testified that it could also make its office parking available for use on nights and weekends if needed to

accommodate demand for parking related to the senior building; (Tr. from Dec. 20, 2021 hearing at pp. 102-103.)

- *Retail/Entertainment Parking.* ANC 6D requested information from the Applicant on whether the amount of public parking in the Project would be adequate to accommodate retail and entertainment parking demand, particularly during Audi Field gamedays. The Applicant responded that the amount of parking was expected to meet market demand and that such parking would not be advertised as gameday parking. (Ex. 14.) At the hearing, VOANS also testified that it could also make its office parking available for use on nights and weekends if needed to accommodate demand for public parking;
- *Traffic Circulation and Pickup/Dropoff Activity—Regular and Gameday.* The ANC requested information regarding traffic circulation and pickup/dropoff activity during both regular operation and on gamedays, and the Applicant included such information in its plans; and (Ex. 9F1, Sheets 16 & 17.)
- *Alley Design and Pedestrian Safety.* The ANC requested the Applicant consider measures to ensure pedestrian safety in the private alley. In response in its Post-Hearing Submission, the Applicant explained how the overall operation and shared use design of the alley would slow vehicular traffic and ensure pedestrian safety but supplemented the design with paving patterns and bollards at key locations to further protect pedestrians. (Ex. 16, 16A1 (Sheet 2).)

48. At the hearing, ANC 6D testified in support of the Application, noting the collaboration between the Applicant and ANC to reach accord on many of the ANC’s issues and concerns. ANC 6D reiterated further suggestions from its report, including the need for additional communal space, more details about the retail and entertainment uses, and requests relating to transportation and parking. ANC 6D stated that these suggestions were not conditions for its support, but instead issues for the Commission to consider in making its final decision. (Tr. from Dec. 20, 2021 hearing at pp. 81-93.)

CONCLUSIONS OF LAW

AUTHORITY—DESIGN REVIEW

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 Rep1.)), the Commission may approve a Capitol Gateway design review application consistent with the requirements of Subtitle K § 512, Subtitle X, Chapter 6, and Subtitle Z § 301.
2. Condition D.2 of Z.C. Order No. 16-02 (as amended by Z.C. Order No. 16-02C) requires that the development of Parcel B secure design review approval from the Commission. The Commission agrees with the Applicant and OP that given the location of Parcel B within the CG-4 Zone, it is appropriate to evaluate the Project as a “mandatory” design review under Subtitle K § 512 as well as under the general design review standards of Subtitle X, Chapter 6.
3. Pursuant to Subtitle X § 600.1, the purpose of the design review process is to:
(a) Allow for special projects to be approved by the Zoning Commission after a public hearing and a finding of no adverse impact;

- (b) Recognize that some areas of the District of Columbia warrant special attention due to particular or unique characteristics of an area or project;*
- (c) Permit some projects to voluntarily submit themselves for design review under this chapter in exchange for flexibility because the project is superior in design but does not need extra density, provided that FAR is measured as the aggregate of all buildings within a Voluntary Design Review boundary;*
- (d) Promote high-quality, contextual design; and*
- (e) Provide for flexibility in building bulk control, design and site placement without an increase in density or a map amendment.*

4. Subtitle X § 603.1 authorizes the Commission, as part of the design review process, to “grant relief from development standards for height, setbacks, yards, lot occupancy, courts, and building transitions, as well as any of a specific zone ... [but] not ... other building development standards including FAR, Inclusionary Zoning, or Green Area Ratio.”
5. Subtitle X § 603.3 provides that “[e]xcept for height, the amount of relief from the standards authorized by Subtitle X § 603.1 is at the discretion of the Zoning Commission, provided that the relief is required to enable the applicant to meet all of the standards of Subtitle X § 604.”

SPECIFIC CG DESIGN REVIEW (SUBTITLE K § 512.3)

6. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies the applicable design review requirements of Subtitle K § 512.3 as detailed below:
 - ***Subtitle K § 512.3(a)*** - The Project will achieve the applicable objectives of the Capitol Gateway as defined in Subtitle K § 500.1 as follows:
 - K § 500.1(a) - The Project provides a mix of high-density residential and commercial uses in line with the Plan and the Buzzard Point Guide.
 - K § 500.1(b) - The Project includes visitor-related entertainment and retail uses.
 - K § 500.1(c) - The Project accommodates the 30-foot wide PEPCO easement that allows for the PEPCO facility to remain in place.
 (The remaining purposes of the CG zone are not applicable to Parcel B.)
 - ***Subtitle K § 512.3(b)*** - The Project will help achieve the desired use mix, by providing residential, entertainment, and retail uses including approximately 455 residential units, 30% of which will be affordable at a range of 30% to 60% MFI as well as over 50,000 square feet of entertainment and retail use.
 - ***Subtitle K § 512.3(c)*** - The Project will be in context with the surrounding neighborhood and street patterns, including the axial prominence of Potomac Avenue, the waterfront connection of S Street SW, and the neighborhood “main street” of Half Street SW. The building design, massing, height, and density is all in line with the anticipated size and scale of Buzzard Point development and pays homage to, but does not replicate, the modernist architectural character of Southwest as well as the industrial heritage of Buzzard Point.
 - ***Subtitle K § 512.3(d)*** - The Project will minimize conflict between vehicles and pedestrians by separating vehicular entrances from pedestrian entrances and, where

- pedestrian and vehicular activity coexist, incorporating design features to encourage pedestrian safety.
- **Subtitle K § 512.3(e)** - The Project will minimize unarticulated blank walls adjacent to public spaces through active storefronts and entrances along First Street, Potomac Avenue SW, and much of Half Street SW where entertainment, retail, and building entrances are located. On the remaining portions along S Street SW and part of Half Street SW that do not have active uses, the Project incorporates high-quality materials and articulation as well as pedestrian-engaging features such as a mural and sculptural lighting.
 - **Subtitle K § 512.3(f)** - The Project will minimize impact on the environment through a commitment to not only LEED Gold certification but also through specific measures such as solar panels, enhanced stormwater management, and environmental remediation.

GENERAL DESIGN REVIEW CRITERIA (SUBTITLE X § 604)

7. Based on the case record and the Findings of Fact above, the Commission concludes that the Application satisfies the applicable general design review requirements of Subtitle X § 604 as detailed below.
8. The Commission concludes that the Application complies with the general design review requirement of Subtitle X §§ 604.1 and 604.2 to comply with the specific CG zone design review requirements because the Application satisfies Subtitle K § 512.3 as discussed above.
9. The Commission concludes that the Application satisfies the requirement of Subtitle X § 604.5 to not be inconsistent with the Comprehensive Plan because the Project:
 - Includes a mix of residential and commercial uses at a height and density that is consistent with Parcel B's Mixed Use High Density Residential / High Density Commercial and Neighborhood Enhancement Area designations on the FLUM and GPM;
 - Supports the Regional Center designation for the adjacent Audi Field on the GPM;
 - Incorporates improved green spaces, enhanced stormwater retention, and energy-efficient design features to support Parcel B's location in a Resilience Focus Area;
 - Includes substantial amounts of affordable housing targeting very-low and low-income households, including housing for seniors and housing for families, which furthers racial equity;
 - Provides for new jobs at a variety of skill sets, new public open spaces, and environmental remediation, all of which also further racial equity; and
 - Is not inconsistent with relevant objectives of the Plan and Buzzard Point Guide for the development of Buzzard Point as a mixed-use, mixed-income neighborhood with parks, amenities, and resilient design.
10. The Commission concludes that the Application satisfies requirement of Subtitle X § 604.6 to not tend to adversely affect the use of neighboring property and the general special exception criteria of Subtitle X, Chapter 9, as discussed below:

- **Subtitle X § 901.2(a)** - The building and its uses are, on the whole, consistent with the CG-4 Zone goals and requirements. Accordingly, the Project is in harmony with the Zoning Regulations and Maps; and
 - **Subtitle X § 901.2(b)** - The design of the building and uses within the building fit well within the surrounding existing and planned uses and include uses such as affordable housing and public open spaces that will contribute positively to the broader Southwest and Buzzard Point neighborhoods. Accordingly, the Project will not adversely affect the use of neighboring property.
11. The Commission concludes that the Application satisfies the urban design requirements of Subtitle X §§ 604.7 and 604.8 to be superior to matter-of-right construction, with respect to the Project’s creative massing, detailing, materials selection, and other design features, its prominent public parks and open spaces, and its pedestrian accommodations, based on the following criteria:
- **Subtitle X § 604.7(a)** - The Project’s street frontages are designed to be safe, comfortable, and encourage pedestrian activity through multiple pedestrian entrances on three frontages, extensive commercial activity with clear, inviting windows, wide sidewalks and other pedestrian-oriented spaces, and the inclusion of features such as murals and lighting to animate the portions of the façade that do not have active uses;
 - **Subtitle X § 604.7(b)** - The Project features multiple public open spaces, including the enhanced curbsless First Street, the improved Potomac Avenue Park, and the Half Street Pocket Park, in an emerging neighborhood where neighborhood open space is not yet available;
 - **Subtitle X § 604.7(c)** - The Project respects the traditional character of Washington’s neighborhoods through respect for the key axial viewshed along Potomac Avenue and waterfront viewshed to S Street, S.W. and incorporation of architectural design elements that pay homage to both the Modernist heritage of Southwest and industrial character of the waterfront;
 - **Subtitle X § 604.7(d)** - The Project delivers attractive and inspired façade design through both elevated lower-level design (such as extensive street-activating design features on all frontages and a signature entrance pavilion for the apartment building) and high-quality architectural massing, design, materials, and articulation for the upper portions of the building;
 - **Subtitle X § 604.7(e)** - The Project incorporates sustainable landscaping in both its ground-level open spaces and upper-story roofs and terraces; and
 - **Subtitle X § 604.7(f)** - The Project promotes connectivity through site features such as the private alley and curbsless First Street, bicycle facilities, and pedestrian-friendly design elements.
12. The Commission concludes that the requested design review flexibility pursuant to Subtitle X § 603 from the preferred use area 75-foot depth requirement of Subtitle K § 509.3(b) meets the standards of Subtitle X § 604 because 100% of the Potomac Avenue, S.W. frontage is devoted to the preferred use and the total required amount of preferred use is still being provided within the north podium.

AUTHORITY—SPECIAL EXCEPTION

13. 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 Commission to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Commission, the special exception:
 - 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 applicable specific conditions set forth in the Zoning Regulations.
14. For the relief requested by the Application, the “specific conditions” are those of Subtitle U § 518.1(c).
15. 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 Commission’s discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and “if the applicant meets its burden, the [Commission] 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)).)

SPECIAL EXCEPTION – BOWLING ALLEY (SUBTITLE U § 518.1(C) AND SUBTITLE X § 901.2)

16. Based on the case record and the Findings of Fact above, the Commission concludes that the Application’s request for special exception approval of a bowling alley use satisfies the special exception criteria as follows:
 - ***Subtitle U § 518.1(c)*** - The Project is greater than 25 feet from any residentially-zoned property, is located next to existing uses that do not require soundproofing, is sufficiently separated from future redeveloped property, and is designed to separate the residential uses from the bowling alley use. Accordingly, the specific criteria for bowling alley use are met;
 - ***Subtitle X § 901.2(a)*** – A bowling alley is a type of entertainment use specifically encouraged in the CG-4 Zone. Accordingly, the bowling alley use is in harmony with the Zoning Regulations and Map; and
 - ***Subtitle X § 901.2(b)*** – As discussed above, the use is sufficiently separated from other uses to address any potential adverse sound impacts. Accordingly, the bowling alley use will not tend to adversely affect the use of neighboring property.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

17. The Commission must give “great weight” to the recommendation of OP, pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016).)

18. The Commission finds OP’s evaluation of the Application as having satisfied the applicable design review requirements to be persuasive, concurs with OP that the Applicant has satisfactorily addressed OP’s recommendations, and concurs with OP’s recommendation to approve the Application.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

19. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy this great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. D.C. Bd. Of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted).)
20. The Commission agrees with ANC 6D’s support for the Application. The Commission agrees with ANC 6D that the affordable housing and public open spaces are laudable features of the Project. The Commission credits ANC 6D as well as the Applicant for their extensive engagement on the issues and concerns outlined in the ANC report and concludes that the Applicant has addressed many of these issues in whole or in significant part, as set forth in the Findings of Fact. While ANC 6D offered its overall support of the Application, it submitted further recommendations on several issues, which it explained were not conditions of its support. The Commission is not persuaded by three of the ANC’s recommendations for the reasons set forth below:
- ***Senior Housing—Communal Space and Balconies.*** The Commission is not persuaded that additional indoor or outdoor amenity space is required or that individual balconies should be provided. The Commission credits testimony from VOANS that the amenity spaces are sufficient to accommodate the active and passive recreation and congregation needs of the senior residents. The Commission also notes that the Applicant added both indoor and outdoor communal space on the ground floor and fourth floor to supplement the primary communal spaces on the top floor. Regarding the Applicant’s decision not to provide balconies, the Commission is persuaded by testimony from VOANS about safety concerns and past experience and expertise in building senior housing;
 - ***Commitments regarding Entertainment and Retail Uses.*** The Commission is not persuaded that the Applicant needs to make further commitments to a “neighborhood-serving” use of either of these spaces. The Commission concludes that such hyper-local use commitments would be in tension with the goals of the Plan and the CG zones to promote “visitor-related” uses; and
 - ***Parking.*** The Commission is not persuaded that additional parking is required to be set aside for senior residents, caregivers, or the public.

- The Applicant has agreed to set aside a minimum of 20 spaces for the 110-unit senior housing building, an amount that is consistent with the regulatory requirement of 1 space per 6 units. Moreover, the proposed 20 spaces are a minimum amount for seniors: the parking garage is expected to set aside approximately 225 spaces for residents of the Project, so senior residents will also have access to the other 205 residential parking spaces;
- With respect to caregiver parking, the Commission agrees with VOANS that a minimum of 5 spaces during the day on weekdays should be adequate to accommodate caregivers and notes that VOANS’s own reservoir of 40 parking spaces for office workers could be used to accommodate evening and weekend parking demand, if needed; and
- With respect to public parking, the Commission credits the Applicant’s testimony that the amount of parking is adequate. The Commission concludes that additional measures to restrict gameday parking are not necessary given the limited number of games at Audi Field and availability of multiple tools that will allow the Applicant and its tenants to regulate parking access if they desire to do so. The Commission also credits VOANS’s testimony that it could make its office parking available for use on nights and weekends.

DECISION

Based on the case record, the testimony at the public hearing, and the above Findings of Fact and Conclusions of Law, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for the following relief for the Property:

- Design review approval pursuant to Condition D.2 of Z.C. Order No. 16-02 (as amended by Z.C. Order No. 16-02C), Subtitle K, Chapter 5, and Subtitle X, Chapter 6, with flexibility from the preferred use requirement of Subtitle K, § 509.3(b); and
- Special exception approval for bowling alley use pursuant to Subtitle U, § 518.1(c) and Subtitle X, § 901.2.

Said relief is subject to the following conditions, standards, and flexibility:

Project Development

1. The Project shall be built in accordance with the plans and elevations dated November 29, 2021 (Ex. 9F1-9F5), as updated by the plans dated December 17, 2021 (Ex. 14A) and January 2022 (Ex. 16A1-16A2, and collectively, the “Final Plans”), and with zoning flexibility from the preferred use requirements, subject to the following areas of flexibility:
 - a. 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 substantially change the exterior configuration of the building as shown on the Final Plans;

- b. 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 Final Plans;
- c. 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 Final Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
- d. To provide a range in the approved number of residential dwelling units of plus or minus 10%, provided that the Project continues to provide a minimum of seven three-bedroom units;
- e. To make refinements to the approved parking configuration, including layout and number of parking spaces plus or minus 10%, so long as the number of parking spaces is at least the minimum number of spaces required by the Zoning Regulations;
- f. To vary the location, attributes, and general design of the approved streetscape in public space to comply with the requirements of, and the approval by, the DDOT Public Space Division;
- g. To vary the final streetscaping and landscaping materials on private property based on availability and suitability at the time of construction, to incorporate materials consistent with adjacent public space, or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, DCRA, or other applicable regulatory bodies, which shall include flexibility to incorporate additional planted space into the design of the Half Street SW streetscape, provided the design is consistent with the Final Plans at Ex. 9F3 and 14A;
- h. To vary the amount, location/orientation and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long as the Project achieves a minimum GAR of 0.2, based on the area of Parcel B, provides a minimum of 4,000 square feet of roof and/or screen wall area containing solar panels and related equipment, and the total number of LEED points achievable for the Project does not decrease below the minimum required by the Order;
- i. To vary the final design and layout of the mechanical penthouse to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Final Plans at Exs. 9F2, 9F4, and 14A, do not substantially alter the roof top amenities or green features, and remain compliant with all applicable penthouse setback requirements;
- j. To vary the final design elements of the outdoor amenity spaces, provided that such changes do not substantially alter the Final Plans at Exs. 9F2, 9F4, and 14A;

- k. To vary the final design of the ground floor frontage, including the number, size, design, and location of windows and entrances, signage, awnings, canopies, marquees, murals, and similar storefront design features, to accommodate the needs of the specific tenants and users within the parameters set forth in the Final Plans at Exs. 9F5 and 14A;
 - l. To locate signage identifying the Project’s primary office occupant within the parameters set forth in the Final Plans at Ex. 14A; and
 - m. To vary the final design of the lighting installed on the S Street ground-floor façade and within the private alley within the parameters set forth in the Final Plans at Ex. 16A-1-16A2.
2. **Ground-Floor Uses.** The Applicant shall have flexibility to change the use of the ground-floor space identified as “Entertainment/Bowling Alley” or “Retail” in the Final Plans at Ex. 9F2 to any use allowed among the “Preferred Uses” in the CG zone; provided, that if the south podium space is changed from entertainment use, the Applicant may revise the Half Street, S.W. ground-floor frontage to match the storefront design for the north podium and may revise the streetscape and landscape plan along Half Street, S.W. to accommodate the new use. The Applicant shall have flexibility to change the second-story space identified as “Entertainment/Bowling Alley” in the Final Plans at Ex. 9F2 to any “Preferred Use” or to office use.
 3. **LEED.** The Project shall 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 standard. Prior to the issuance of a building permit, the Applicant shall submit evidence of registration with the U.S. Green Building Council as well as a copy of the LEED scorecard, and further, the Applicant shall submit an updated LEED scorecard prior to the issuance of a final certificate of occupancy, each to demonstrate compliance with this condition.
 4. **EV Charging Stations.** For the life of the Project, the Applicant shall provide a minimum of six spaces with access to electric vehicle charging stations in the Project’s below-grade garage.
 5. **Universal Design. Prior to the issuance of the final Certificate of Occupancy for the Project,** the Applicant shall demonstrate that it has installed the universal design and accessibility elements pursuant to the list set forth on the Final Plans at Ex. 14A or other applicable laws and regulations within the senior housing component of the Project.
 6. **Mural. Prior to the issuance of the final Certificate of Occupancy for the Project,** the Applicant shall demonstrate that it has entered into an agreement with a local artist to commission one or more murals on the blank portions of the Half Street, S.W. and private alley façades in the locations shown the Final Plans at Exs. 14A and 16A1.

- a. The Applicant shall issue solicitations for the mural through a “request for proposals” or similar process. The Applicant will further provide ANC 6D representatives with an opportunity to review and advise on the proposals that are received.
 - b. Installation of the mural shall commence within six months of the issuance of the Certificate of Occupancy.
 - c. The Applicant shall have flexibility to modify and/or change the design of the Project’s mural(s) over the life of the Project consistent with the conditions of this Order.
7. **Lighting. Prior to the issuance of the final Certificate of Occupancy for the Project,** the Applicant shall demonstrate that it has installed lighting elements to activate the Project’s S Street, S.W. streetscape and private alley, with the flexibility to modify and/or change the design of such lighting over the life of the Project consistent with the conditions of this Order.

Transportation Management Measures

8. **For the duration of the senior housing use in the Project,** the Applicant shall set aside a minimum of:
- a. Five spaces in the parking garage for caregivers of senior residents, on a no-cost or fully-reimbursable basis, on weekday daytime hours; and
 - b. Twenty spaces in the parking garage as parking for residents of the senior housing component of the Project, such spaces to be located closest to the elevator to the senior housing component of the Project.
9. **For the life of the Project,** residents of the Project shall be ineligible to participate in the District’s Residential Parking Permit or Visitor Parking Pass programs by notice given and enforced through a lease provision or similar mechanism.
10. **Prior to the issuance of a building permit for the Project,** the Applicant shall demonstrate that it has engaged with DDOT on the Audi Field Traffic Operations and Parking Plan (“TOPP”) to ensure the Project’s access needs are considered in the next TOPP update.
11. **Prior to the issuance of the final certificate of occupancy for the Project,** the Applicant shall demonstrate that it has (a) relocated the Capital Bikeshare station that is currently located adjacent to the Property at the southwest corner of the intersection of Potomac Avenue, S.W. and Half Street, S.W. to the northeast corner of the intersection and (b) expanded the station by four docks, each subject to DDOT approval.
12. **Following the issuance of the final certificate of occupancy for the Project,** the Project’s Transportation Coordinator shall submit to the Office of Zoning for inclusion in

the IZIS case record of the case documentation summarizing compliance with the transportation and TDM conditions of this Order.

13. **Five years after the issuance of the final certificate of occupancy for the Project**, if the Transportation Coordinator has not established a relationship with DDOT or goDCgo, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo summarizing continued substantial compliance with the transportation and following TDM conditions in the Order, unless no longer applicable as confirmed by DDOT; provided, that if such letter is not submitted on a timely basis, the Applicant shall have 60 days from date of notice from the Zoning Administrator, DDOT, or goDCgo to prepare and submit such letter.
14. **For the life of the Project**, the Applicant shall adhere to the following Transportation Demand Management plan measures:

Site-Wide TDM

- a. Refrain from leasing unused parking spaces to anyone aside from tenants of the building (e.g., will not lease to other nearby office employees, single-family home residents, or sporting events);
- b. Identify Transportation Coordinators for the planning, construction, and operation phases of the development, who 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. Require Transportation Coordinators to develop, distribute, and market various transportation alternatives and options to the residents, employees, and tenants, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on the Project's website and in any internal building newsletters or communications;
- e. Require Transportation Coordinators to receive TDM training provided by goDCgo to learn about the TDM conditions for the Project and available options for implementing the TDM plan;
- f. Post "getting here" information in a visible and prominent location on the property website with a focus on non-automotive travel modes, and provide links to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for customers, patrons, and attendees discouraging parking on-street in Residential Permit Parking (RPP) zones;
- g. Provide residents and employees who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by the

Metropolitan Washington Council of Governments (“MWCOG”) or another comparable service if MWCOG does not offer this in the future;

- h. Require the Project’s Transportation Coordinator to subscribe to the goDCgo residential newsletter;
- i. Post all TDM commitments on the property website, publicize availability, and allow the public to see what commitments have been promised;
- j. Offer one (1) complimentary Capital Bikeshare coupon good for a free ride to each new employee and resident;
- k. Satisfy the zoning regulations’ short-and long-term bicycle parking requirements, through a minimum of 178 long-term spaces and 38 short-term spaces within and around the perimeter of the Property, with long-term bicycle space to be provided free of charge to residents and employees;
- l. Satisfy the zoning regulations’ requirements for showers and lockers for use by employees, through a minimum of four showers and 14 lockers within the Project;
- m. Accommodate in the long-term bicycle storage rooms non-traditional sized bikes including cargo, tandem, and kids’ bikes;
- n. Provide within each long-term bicycle storage room electrical outlets for the charging of electric bikes;

Residential TDM Plan

- o. 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; except for parking for the senior affordable housing component, which may be charged at a reduced rate;
- p. Provide welcome packets to all new residents and tenants that, 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 brochure, and the most recent DC Bike Map;
- q. Provide one (1) collapsible shopping cart (utility cart) for every 50 residential units, for a total of nine carts, to encourage residents to walk to the grocery store and run errands;

Office TDM Plan

- r. Distribute information on the Commuter Connections Guaranteed Ride Home program, which provides commuters who regularly carpool, vanpool, bike, walk, or take transit to work with a free and reliable ride home in an emergency;

- s. Require Transportation Coordinators to demonstrate to goDCgo that office tenants or occupants with 20 or more employees are in compliance with the DC Commuter Benefits Law and participate in at least one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future;

Retail/Entertainment TDM Plan

- t. Charge market rates for retail parking with the flexibility to increase pricing during events at Audi Field or Nationals Park. Free parking will not be offered, except for caregiver parking;
- u. Require Transportation Coordinators to demonstrate to goDCgo that retail or entertainment tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law and participate in at least one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future; and
- v. Require Transportation Coordinators to demonstrate to goDCgo that retail tenants are in compliance with the Transportation Benefits Equity Amendment Act.

15. **For the life of the Project**, the Applicant shall adhere to the following Loading Management Plan measures:

- a. A loading dock manager will be designated by the building management who will be on duty during delivery hours. The dock manager will be responsible for coordinating with vendors and tenants to schedule deliveries and will work with the community and neighbors to resolve any conflicts should they arise.
- b. All tenants will be required to schedule deliveries that utilize the loading area (any loading operation conducted using a truck 20-feet in length or larger).
- c. The dock manager will schedule deliveries using the berths such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as to not compromise safety or impede functionality
- d. In the event that a truck or bus associated with the event space cannot use the loading berth, it will be directed to use the private alley to load and/or unload.
- e. The dock manager will schedule residential loading activities so as not to conflict with retail deliveries. All residential loading will need to be scheduled with the dock manager.

- f. The dock manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic along First Street, S.W. and the private alley, except during those times when a truck is actively entering or exiting a loading berth.
- g. Service vehicle/truck traffic interfacing with First Street, S.W. traffic will be monitored during peak periods and management measures will be taken if necessary to reduce conflicts between truck and vehicular movements.
- h. The dock manager will monitor the timing of the retail and/or residential deliveries to see if any adjustments need to be made to ensure any conflicts with the retail loading and residential loading activities are minimized.
- i. The dock manager will schedule deliveries so that no deliveries should arrive six hours prior to or three hours after a game or other event at Audi Field, consistent with the Audi Field + Nationals Park Traffic Operations & Parking Plan (2019).
- j. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, § 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight).
- k. The dock manager will be responsible for disseminating suggested truck routing maps to the building’s tenants and to drivers from delivery services that frequently utilize the development’s loading dock as well as notifying all drivers of any access or egress restrictions (ex. Game Day restrictions). The dock manager will also distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws. The dock manager will also post these materials and other relevant notices in a prominent location within the loading area.

Environmental Remediation

16. **Prior to the issuance of the final certificate of occupancy for the Project, the Applicant shall demonstrate that it has undertaken the following measures with respect to environmental remediation activities:**

- a. A presentation to ANC 6D at a public meeting on the anticipated Voluntary Cleanup Program process and timeline, including opportunities for public comment, prior to commencing the process.
- b. Provision of a copy of an “advance copy” of a Voluntary Cleanup Action Plan (“VCAP”) to representatives of ANC 6D in draft form at least 30 days prior to submission, and an offer to present the VCAP to the ANC’s executive committee during this 30-day review period.

- c. Preparation of a Dust and Odor Control Plan to ensure the control of fugitive dust generated by soil remediation and construction to protect public health, which shall include (1) a number of dust suppression and odor control measures, such as actively spraying actively worked soils and covering stock, (2) the installation of two air monitors, on opposite sides of the excavation site (i.e., one upwind and the other downwind), that will provide real-time monitoring for six months (to coincide with the duration of excavation) to ensure that fugitive dust associated with excavation does not pose a risk to public health, and (3) monthly reporting to summarize the air monitoring results correlated with the construction activities during the six-month monitoring period.

General

17. This Application approval 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. (Subtitle Z § 702.3.)

VOTE (January 13, 2022): 5-0-0 (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Joseph S. Imamura to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 16-02D shall become final and effective upon publication in the *D.C. Register*; that is, on July 1, 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.