

**APPLICATION TO THE
ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**

FOR

**D-8 ZONE SPECIAL EXCEPTION APPROVAL
PURSUANT TO 11-I DCMR § 581**

**300 12TH STREET, SW (SQUARE 326, LOT 806)
JEMAL'S COTTON ANNEX L.L.C.**

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I. INTRODUCTION

This statement is submitted on behalf of Jemal’s Cotton Annex L.L.C. (the “Applicant”) in support of an application to the Zoning Commission for the District of Columbia (the “Zoning Commission”) for special exception approval, pursuant to Subtitle I § 581 of the District of Columbia Zoning Regulations, 11 DCMR (September, 2016), as amended (“DCMR” or “Zoning Regulations”), for new construction and rehabilitation of existing improvements on property located in the D-8 zone. As described herein, the Applicant also requests variance relief, pursuant to 11-X DCMR § 1000.1, to allow courts not meeting the dimensional requirements of 11-I DCMR § 207.1, and relief from the prohibition against increasing building density within the footprint of a designated historic structure as set forth in 11-I DCMR § 200.3.

The property that is the subject of this application is located at 300 12th Street, SW (Square 326, Lot 806) (the “Property”) and is within the D-8 zone. *See* Zoning Map included with the Architectural Drawings (the “Architectural Drawings”) attached hereto. The Property is bounded by 12th Street, SW, to the west, D Street, SW, to the south, the closed dead-end portion of C Street, SW, to the north (now private property), and the 12th Street Expressway to the east. The Property has a land area of approximately 61,672 square feet and is generally rectangular in shape with a chamfered corner at its northeast. *See* building plat attached hereto.

The western portion of the Property is improved with the historic Cotton Annex building constructed circa 1937 for the U.S. Department of Agriculture (the “Cotton Annex”), which is listed individually on the National Register of Historic Places. The Applicant acquired the Property from the U.S. General Services Administration (“GSA”) in 2017.

As detailed in the Architectural Drawings, the Applicant proposes to sensitively rehabilitate and incorporate the existing historic structure into a 12-story apartment house with the addition designed in the form of a reverse “C” shape around a central courtyard. The project will contain approximately 600 rental apartment units and approximately 1,368 square feet of ground floor retail/service use. The overall project will contain approximately 452,582 square feet of gross floor area (7.34 FAR), of which approximately 82,400 square feet of gross floor area will be located within the footprint of the historic resource, and will have a maximum building height of approximately 119 feet, not including penthouse.

II. JURISDICTION OF THE ZONING COMMISSION

Pursuant to 11-I DCMR § 581.1, all proposed “uses, new buildings, and new structures, or any proposed exterior renovation to any existing buildings or structures that would result in an alteration of the existing exterior design” within the D-8 zone are subject to review and approval by the Zoning Commission as a special exception in accordance with the provisions of 11-X DCMR Chapter 9 and 11-I DCMR §§ 581.2 through 581.5.

In accordance with 11-I DCMR § 581.5, as part of the special exception to be considered under 11-I DCMR § 581, the Zoning Commission may hear and decide any additional requests for

special exception or variance relief needed for the Property, and such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval. In this case, the Applicant includes as part of the special exception application requests for variance relief related to court dimension (11-I DCMR § 207.1) and building density permitted to be located within the footprint of a historic resource (11-I DCMR § 200.3).

III. BACKGROUND

A. The Property

The Property is identified as Lot 806 in Square 326. Square 326 is located in the southwest quadrant of the District and is comprised entirely of the Property and Lot 807 to its north, which is the dead-end portion of C Street, SW, that is now closed and in private ownership. The Applicant holds a non-exclusive easement for ingress and egress purposes across this parcel. The Property is also bounded by the 12th Street Expressway to the east, D Street, SW, to the south, and 12th Street, SW, to the west. The Property is zoned D-8 and is located within Credit Trade Area 6. It is located within the bounds of the Central Employment Area. The Property is included on the D.C. Inventory of Historic Sites and the National Register of Historic Places. It is also subject to review by the U.S. Commission of Fine Arts (“CFA”) pursuant to the Shipstead-Luce Act.

The Property is generally rectangular in shape, with a chamfered northeast corner, and contains approximately 61,672 square feet of land area. On the west side of the Property is the historic Cotton Annex building, which is currently vacant. The Cotton Annex building footprint occupies roughly 12,330 square feet and contains approximately 80,423 square feet of gross floor area in six stories plus basement. The east side of the Property is currently utilized as a surface lot for public parking.

As shown on Sheet 5 of the Architectural Drawings, the Property is confronted with two unusual and significant below-grade conditions. The Washington Metropolitan Area Transit Authority (“WMATA”) controls and occupies a subsurface easement area across the northeastern corner of the site for use by Metro train lines. There also are a series of heating and chiller line pipes running east-west subgrade through the Property, connecting the Heating Plant across 12th Street operated by the GSA and various federal buildings in the vicinity.

B. The Surrounding Area

The Property is located approximately two blocks south of the National Mall and is primarily surrounded by federal institutional buildings, including the U.S. Department of Agriculture, the U.S. Department of Energy, U.S. Postal Service, Immigration and Customs Enforcement, the Federal Communications Commission, and Social Security. Also nearby the Property is the Mandarin Oriental hotel and private office buildings within the Portals development, the United States Holocaust Memorial Museum, and several Smithsonian and other museums located along Independence Avenue and the National Mall. The Smithsonian Metrorail station is located approximately one block to the north of the Property, and the L’Enfant Metrorail station is located approximately three blocks to the east of the Property. The Washington Monument is located to the northwest.

C. Zoning

The Property is located in the D-8 zone. The purposes of the D-8 zone are to permit high-density development, to foster the transition of a federally-owned area south of the National Mall into a mixed-use area of commercial, residential, cultural, arts, retail, and service uses with both public and private ownership, and to promote greater pedestrian and vehicular connectivity with an emphasis on re-establishing connections that have been compromised by previous street closings, vacations, obstructing construction, or changes in jurisdiction. *See* 11-I DCMR § 575.1. Residential and retail uses are permitted as a matter-of-right in the D-8 zone. *See* 11-I DCMR § 302.1; 11-U DCMR §§ 515.1(a); 512.1(k); and 501.2.

The maximum permitted density for a building in the D-8 zone is the density achievable within the height and bulk permitted by the zone and any applicable sub-area regulations if: (a) all of the building's FAR is devoted to residential use; (b) all FAR exceeding the maximum non-residential density of 6.5 FAR is devoted to residential use; or (c) if conditions (a) or (b) are not satisfied, through the use of credits provided for by 11-I DCMR, Chapters 8 and 9. *See* 11-I DCMR § 576.1. The maximum permitted non-residential density for a building in the D-8 zone is 6.5 FAR unless a greater density is approved by the Zoning Commission, consistent with 11-I DCMR § 581. *See* 11-I DCMR § 576.4. Residential density in the D-8 zone is subject to the Inclusionary Zoning requirements and bonuses of Subtitle C, Chapter 10. 11-I DCMR § 576.3.

If a historic landmark or contributing building or structure in a historic district has an existing density of more than 6.0 FAR on the portion of a lot within the historic structure's footprint, it may not increase the existing density within the historic structure's footprint, but may occupy all of the existing floors of the building for uses permitted within the zone and may generate density credits under the provisions of 11-I DCMR Chapter 8. *See* 11-I DCMR § 200.3.

The maximum permitted building height in the D-8 zone is 130 feet for property abutting a street with a right-of-way width that is greater than or equal to 110 feet. *See* 11-I DCMR § 577.1. The maximum permitted penthouse height is 20 feet in one story plus a mezzanine, with a second story permitted for penthouse mechanical space. *See* 11-I DCMR § 577.4.

Buildings in the D-8 zone are subject to the front build-to regulations in 11-I DCMR § 203. *See* 11-I DCMR § 578.1. Front setbacks are not required. *See* 11-I DCMR § 579.1. Unless otherwise limited by regulations governing courts, side or rear yards, front setback or build-to lines, easements, or historic preservation, each building on a lot within the D-8 zone may occupy 100% of its lot. *See* 11-I DCMR § 202.1.

A rear yard is not required for a lot fronting on three or more streets in the D-8 zone. *See* 11-I DCMR § 205.2(b). A side yard is not required for historic landmarks. *See* 11-I DCMR § 206.3. If provided, an open court must have a minimum width of 4 inches per foot of height of court (ten feet minimum); a closed court must have a minimum width of 4 inches per foot of height of court (15 feet minimum); and a closed court must have a minimum area of twice the square of the required width of court (350 square feet minimum). *See* 11-I DCMR § 207.1. A minimum Green Area Ratio ("GAR") of 0.20 is required in the D-8 zone. *See* 11-I DCMR § 208.1.

Vehicle parking spaces are not required in D zones, with certain limited exception not applicable to the Property. *See* 11-IDCMR § 212.1. Bicycle parking spaces are required as follows: (i) residential apartment use requires one long term space for every three dwelling units and one short-term space for every 20 dwelling units; and (ii) retail use requires one long term space for every 10,000 square feet and one short-term space for every 3,500 square feet. *See* 11-C DCMR § 802.1. Additions to historic resources are required to provide additional bicycle parking spaces only for the addition's gross floor area and only when the addition results in at least a 50% increase in gross floor area beyond the gross floor area existing on the effective date of the Zoning Regulations. *See* 11-C DCMR § 802.6.

Loading facilities are required as follows: (i) residential use, more than 50 dwelling units requires one loading berth at 30 feet deep and one service/delivery space at 20 feet deep. *See* 11-C DCMR § 901.1. When two or more uses in different use categories share a building or structure, the building or structure is only required to provide enough berths and spaces to meet the requirement for the use category with the highest requirement, and not the combination of requirements for all use categories provided that all uses that require loading have access to the loading area. *See* 11-C DCMR § 902.2. An addition to a historic resource is required to provide additional loading berths, loading platforms, and service/delivery spaces only for the addition's gross floor area and only when the addition results in at least a 50% increase in gross floor area beyond the gross floor area existing on the effective date of the Zoning Regulations. *See* 11-C DCMR § 901.7.

IV. PROPOSED PROJECT

As shown on the Architectural Drawings, the Applicant proposes to construct a sympathetic new C-shaped addition to the existing Cotton Annex building. The new construction will contain approximately 370,181 square feet of gross floor area, and together the new construction and the existing building will contain approximately 452,582 square feet of gross floor area (7.34 FAR total)(collectively, the "Project"). The building will have a maximum height of approximately 118.75 feet, as measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof excluding parapets not exceeding four feet in height. As has been confirmed by the Zoning Administrator, the Property fronts on three streets (D Street, 12th Street, and the 12th Street Expressway), and the width of the 12th Street Expressway can be used to (i) determine the maximum permitted height of the building on the Property, and (ii) establish the building height measuring point. In this location, the width of the 12th Street Expressway is 111.42 feet.

In furtherance of Federal and local planning initiatives as described below, the Project proposes to introduce a significant new residential use to this site, which has historically been dominated by institutional uses. The Applicant proposes to create on the site a 12-story apartment house containing approximately 600 rental dwelling units, tenant amenities, space for ground floor retail/service use, and a landscaped "pocket park" feature.

Central to the Project's program and design is the landmark six-story Cotton Annex building that occupies roughly the western third of the site. Designs for expansion of the Cotton Annex date back to its initial construction in the 1930s, with plans showing the building footprint organized around a U-shaped closed courtyard and elevations showing a general continuation of

the line and scale of the original building (*See* Sheets 6 and 7 of the Architectural Drawings). In coordination with the DC State Historic Preservation Office, the Applicant has developed a scope of work to preserve, restore, and rehabilitate the vast majority of the landmark building, as detailed on Sheets 8 and 9 of the Architectural Drawings, while creating a sensitive building addition that despite being modern in its material palette and design language is nonetheless sympathetic to the historic building and original expansion plan in terms of scale and footprint, in the process providing a buffer between the landmark and new construction. The only portion of the existing building proposed for demolition and replacement is a 1980s-era stair tower addition located along the south wall of the building. *See* Sheet 9 of the Architectural Drawings. Immediately adjacent to the stair tower, fronting 12th Street, SW, is a one-story appendage to the historic building that has served as a transformer vault. While this vault space is proposed to be preserved as part of the Project, it serves as the location that generates the Applicant's request for building density zoning relief detailed below.

The proposed addition is also carefully scaled to provide a transition in height, measuring approximately 88 feet in height along its northern frontage then climbing in height to approximately 118.75 feet in height at its south, with similar height differentiation occurring from west to east across the Property. This massing approach focuses overall height and density in the east and southeast quadrants of the Property, where taller heights and more modern design is better contextualized with newer construction to the south across Maryland Avenue and to the east. The building penthouse is likewise shaped to provide a two-story penthouse with habitable units and space on the lower penthouse level and mechanical above, while meeting required setbacks and minimizing overall volume.

The landmark building will be renovated to contain approximately 100 of the overall 575-600 dwelling units proposed for the Project along with a fitness center, leasing office and amenity spaces. The remaining approximately 475-500 dwelling units along with the main building lobby, additional amenity space, approximately 1,860 square feet of ground floor retail/service space, approximately 93 parking space and loading operations will be located within the C-shaped new addition, creating a large central courtyard space within the building.

The primary pedestrian entry point to the building will be located at the northwest corner of the building, through the hardscaped and landscaped corner plaza. A few of the ground level dwelling units along the north frontage are also proposed to have step-out access. Vehicular ingress and egress to the single level of below-grade vehicular parking as well as bicycle parking is accessible along the north frontage pursuant to an access easement across the former segment of C Street, SW, that is now in private ownership. Front-in front-out loading access is proposed near the southwest corner of the Property along 12th Street, SW, utilizing an existing curb cut.

The materials palette for the building addition is a sensitive combination of traditional masonry and modern metals and glass with color choices that relate both to the landmark building that is central to the Project design as well as the design language that is prevalent in all directions of the site.

Given the Property’s location, it is subject to review by the Commission of Fine Arts pursuant to the Shipstead-Luce Act. The Applicant has met on multiple occasions with CFA staff and formally presented to the CFA at its November 19, 2020, public meeting. While no formal action was taken at that meeting, the Project was well-received by the Commission in terms of its treatment of the landmark and the overall scale and design direction of the new building addition and its appearance from the National Mall in particular. The Commission made suggestions as to how the Applicant could further reduce the apparent bulk of the building and more successfully relate the lower portions of the new construction to the Cotton Annex, especially by highlighting the relationship to the landmark’s entablature level. The Applicant has responded to those recommendations, as reflected in the Architectural Drawings and anticipates returning to the CFA in January 2021 for proposed concept design approval.

V. SPECIAL EXCEPTION (D-8)

A. Compliance with 11-I DCMR § 581.1

All proposed uses, new buildings, and new structures, or any proposed exterior renovation to any existing buildings or structures that would result in an alteration of the existing exterior design, shall be subject to review and approval by the Zoning Commission as a special exception in accordance with the provisions of Subtitle X, Chapter 9 and Subtitle I §§ 581.2 through 581.5, and, for locations not subject to review by the Commission of Fine Arts and for locations fronting on Independence Avenue between 2nd and 12th Streets, N.W., shall be referred to the National Capital Planning Commission for review and comment.

1. Section 901.2

The Board of Zoning Adjustment is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:

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

The overall purpose of the Zoning Regulations is to establish minimum standards for the promotion of public health, safety, morals, convenience, order, prosperity, and general welfare, by (i) providing adequate light and air; (ii) preventing undue concentration of population and overcrowding of land; and (iii) distributing population, business, and industry, and the use of land in a manner that creates favorable conditions. *See* 11-A DCMR § 101.1.

One of the primary purposes of the Downtown (“D”) zones is to provide for the orderly development of areas deemed appropriate for high-density mixed-use development. *See* 11-I DCMR § 100.1. As related to the project, the D zones are intended to, among other things, (i) protect historic buildings while permitting compatible new development, (ii) provide for the return of historic L’Enfant streets and rights-of way, (iii) and encourage the development of housing, including affordable housing, in Central Washington. *See* 11-I DCMR § 100.2. Specifically, the D-8 zone is intended to “foster the transition of a federally-owned area south of the National Mall into a mixed-use area...and to promote greater pedestrian and vehicular connectivity with an

emphasis on re-establishing connections that have been compromised by previous street closings, vacations, obstructing construction, or changes in jurisdiction.

The Project will be in harmony with the general purpose and intent of the Zoning Regulations, and is consistent with the purposes of the D-8 zone. The Project will promote public health and safety by redeveloping a long underutilized property with a well-designed residential project that will advance District and Federal goals for this part of Southwest, and most notably help the District achieve its housing and affordable housing goals. The design of the Project will not cause adverse impacts to light and air, and the added residential will not result in undue concentration of population. Indeed, the new residential units will add vitality to a primarily federal commercial enclave.

Overall, the proposed Project will create favorable conditions related to housing, urban design, pedestrian circulation, sustainability, and historic preservation. Consistent with the purposes of the D zones, the Project will protect the historic Cotton Annex through a compatible, adaptive reuse residential development. It will also help reestablish a segment of the original C Street right-of-way in its historic L'Enfant alignment. Finally, as intended by the D-8 zone, the Project will help transition this portion of Southwest away from the current overconcentration of federal offices to a vibrant, mixed-use, sustainable urban neighborhood.

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

The Project will not have any adverse impacts on the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The height, massing, and materials of the Project have been designed in a manner that relate to the surrounding context. The proposed height of the building is below the 130-foot maximum height permitted under the Zoning Regulations. In addition, the thoughtful massing of the Project, with height increasing toward the east and south, and the width of the surrounding streets will effectively minimize any potential for adverse impacts to light and air on neighboring properties. Notably, to the extent there is any potential for impacts to light and air to the proposed hotel project to north, any such impacts will be minimized by the substantial height and massing reductions provide at the north end of the Project and the separation provided by the C Street easement area. The proposed residential and retail uses will also not adversely impact the use of neighboring properties. Indeed, the proposed residential and retail uses are expressly described in the Maryland Avenue Small Area Plan and SW EcoDistrict Plan as being critical to revitalizing this portion of Southwest. The residential uses will enliven the area, particularly during off-peak weekday hours and weekends when the surrounding office buildings not fully occupied. Finally, the proposed retail use, albeit small, will provide an additional amenity to residents, workers, and visitors to the area.

(c) Will meet such special conditions as may be specified in this title.

As demonstrated below, the Applicant satisfies all applicable conditions under Subtitle I § 581.

2. Section 581.2

The reviewing body shall consider whether the proposed project – including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation – will help achieve the objectives of the Maryland Avenue Small Area Plan approved June 26, 2012, and its related or successor plans (the “Maryland Plan”).

Maryland Avenue, an original L’Enfant Plan avenue, was originally intended as the mirror to Pennsylvania Avenue, both radiating westward from the U.S. Capitol. As originally intended in the L’Enfant Plan, Maryland Avenue was to be a broad, monumental avenue dotted with well-defined public spaces. Unfortunately, Maryland Avenue was never fully established due primarily to the early incursion of the railroad along the avenue’s planned alignment. Later incursions caused by the construction of highway infrastructure further exacerbated the avenue’s poor urban quality and connectivity to the surrounding street grid.

The Maryland Plan takes a detailed look at what is needed to reestablish Maryland Avenue as the grand urban boulevard envisioned in the L’Enfant Plan. The Maryland Plan was prepared by the Office of Planning, in coordination with the National Capital Planning Commission’s (“NCPC”) efforts at the time to prepare the Southwest EcoDistrict Plan. Both planning efforts were informed by the Monumental Core Framework Plan (prepared by NCPC and CFA) and the Center City Action Agenda. In addition to reestablishing Maryland Avenue, a major focus of the Maryland Plan is to create a more lively and sustainable land use mix in the area of Southwest between the National Mall and the SE/SW freeway, consistent with the planning efforts noted above. The Maryland Plan also seeks to better connect the avenue to the street grid and key activity nodes, and improve pedestrian and bicycle circulation and access to transit. Finally the Maryland Plan strives to create a high-quality, sustainable public realm.

The Project will help achieve all of the stated objectives of the Maryland Plan, particularly as it relates to land use and the desire to add vitality to the area. The Maryland Plan identifies restaurants/cafes, residential, retail, and parks as the most desirable uses to help achieve a more balanced use mix to complement the strong office presence that currently exists. While not major components, the Project will include an approximate 8,800 square foot courtyard at 12th and C Streets that is available to the public, and approximately 1,368 square feet of retail/services uses at the corner of 12th and D Streets. This is the only feasible location and amount for retail/service uses in the Project given the expressway along the east and south, the elevated first floor level of the historic Cotton annex, and limitations on the use of the C Street easement area.

The most notable aspect of the Project is the proposed residential program. To successfully activate this area of Southwest, the SW EcoDistrict recommends a goal of 30% of new development being comprised of residential and hotel uses, and the Maryland Plan stipulates a minimum of 1,000 new residential dwelling units are necessary to begin attracting significant retail. Both of these plans target underutilized sites as ideal for new residential development, and specifically identify the Cotton Annex site as a prime candidate with a capacity of approximately 520,000 square feet. Consistent with the above stated targets and goals, the Project will contain approximately 452,582 square feet of development, approximately 99.7% of which will be devoted to residential use. This amount of residential use, 8% of which will be devoted to affordable

housing, will make a significant contribution to the minimum target of 1,000 dwelling units prescribed in the Maryland Plan as necessary to begin activating the area.

The Project will also help achieve the Maryland Plan's objectives to remove barriers, create a more connected grid, and reinforce the prominence of the historic L'Enfant Plan. By constructing the north façade of the Project to the lot line, the Applicant seeks to strengthen the historic alignment of the former L'Enfant Plan C Street right-of-way. The improvements that will be made to the C Street easement area by the Applicant and adjacent property owner will further strengthen the legibility of the easement area as a street, albeit not a dedicated public street. While minor in scale, the reestablishment of this section of the former C Street right-of-way is a step forward toward achieving the preferred circulation pattern identified in both the Maryland Plan and the SW EcoDistrict Plan.

The Project will also help reinforce the Maryland Avenue corridor as a prominent L'Enfant avenue on axis with the U.S. Capitol. As discussed below, while not directly abutting the former Maryland Avenue corridor, the Project would confront the corridor - across D Street and Reservation 197 - should this portion of Maryland Avenue ever be reestablished. The proposed height and mass of the building's southern facade will strengthen the definition of the Maryland Avenue corridor and the viewshed toward the U.S. Capitol.

The Project will improve pedestrian and bicycle connectivity, and help create a quality, sustainable public realm. As part of the Project, the streetscape along 12th Street will be reconstructed to District standards, including new paving, tree boxes, and bicycle parking. Open space and outdoor seating will be provided in the landscaped courtyard near the main entrance at C Street. Additional sidewalk space and seating will also be provided outside the retail space at D Street where the new construction is set back from the property line to align with the historic Cotton Annex.

Finally, the Maryland Plan objectives addressing the public realm promote optimization of height and design that complements and minimizes impacts on surrounding buildings. The design of the Project will help achieve these objectives. The proposed height of the Project balances the need to respect the historic Cotton Annex and the surrounding context with the objective to optimize height as appropriate. As clearly shown in the Plans, the height and mass of the Project along C Street and at the corner of 12th and D Streets aligns with the Cotton Annex, increasing in height as the building progresses to the south and east. While the Zoning Regulations permit a maximum height of 130 feet, at its highest point the proposed building reaches a maximum height of approximately 118'-8". These taller volumes of the building also contain a 20-foot penthouse that meets all setback requirements. The maximum height of the Project is consistent with the Maryland Plan objective to optimize height, and the SW EcoDistrict Plan for this particular parcel. It is also consistent with the 1910 Height Act which supports taller buildings along the city's widest streets, particularly those on axis with major public buildings.

- a. *Building height, mass, and siting shall respect or re-establish vistas to the U.S. Capitol, the Washington Monument, and the Smithsonian Institution's original building;*

Consistent with this subsection, the proposed height, massing, and siting of the new construction respects vistas to the U.S. Capitol, Washington Monument, and the Smithsonian

Institution's original building. From a siting perspective, the Property is not located along any vistas that directly align with the U.S. Capitol, Washington Monument, or the Smithsonian Castle. Notwithstanding, as discussed below, the height and massing of the Project has been developed in a manner that is sensitive to the site's proximity to the former Maryland Avenue corridor to the south, the National Mall to the south, and to the historic Cotton Annex itself.

The context surrounding the building has greatly informed the height and massing of the Project. To the north, the lower height and massing of the Project is respectful of the Cotton Annex building and the open space and monumental character of the National Mall, including the original Smithsonian building. The massing and initial height of approximately 88 feet along the north relates to the historic Cotton Annex building, and appropriately relates to the 80-foot width of the former C Street right-of-way/access easement to the north. Together with the proposed hotel project to the immediate north, the Project will provide a first step toward reestablishing the historic C Street right-of-way, and viewshed toward Reservation 113.

The lower height and massing is carried along 12th Street to continue the relationship with the historic Cotton Annex, and to the USDA headquarters building and GSA Central Heating Plant. While not in direct alignment with the Washington Monument or the Smithsonian Castle, the proposed height and massing along 12th Street will strengthen the viewshed toward the National Mall by establishing a consistent cross-section and strengthening the streetwall.

Along the east and south sides of the Project, the height and massing increase in response to existing taller buildings along 10th Street (L'Enfant Promenade) and south of the former Maryland Avenue corridor, as well as the former corridor itself. As shown on Sheets 10 and 11 of the Architectural Drawings, the approximate height of the buildings along the L'Enfant Promenade range between 80 - 130 feet, with lower buildings closer to the National Mall and taller buildings toward Banneker Park. In addition, the buildings to the immediate south of the Project have approximate heights of 100 - 130 feet.

With respect to Maryland Avenue, the portion of this important corridor has been formally closed between 9th and 12th Streets, SW, including the portion directly south of the Project. While not directly abutting the former Maryland Avenue corridor, the Project would confront the corridor - across D Street and Reservation 197 - should this portion of Maryland Avenue ever be reestablished. The proposed height and mass of the building's southern facade will strengthen the definition of the Maryland Avenue corridor and the viewshed toward the U.S. Capitol. This condition is consistent not only with the objectives of the Maryland Plan but also with the objectives of the SW EcoDistrict Plan, the Monumental Core Framework Plan, and the 1910 Height of Buildings Act, all of which support taller buildings along the District's wide avenues, particularly those on axis with major public buildings.

- b. Greater connectivity shall be achieved for pedestrians and vehicles both within the area and the adjacent area and shall be based on historic street rights-of-way, particularly including:*
 - i. Maryland Avenue, S.W. and the former right-of-way of that avenue between 6th and 12th Streets, S.W.;*

- ii. *C Street, S.W., between 7th and 12th Streets, S.W.; and*
- iii. *12th Street, S.W., 11th Street, S.W., and the L'Enfant Promenade/10th Street, S.W., between Independence Avenue, S.W and D Street, S.W.;*

Improved connectivity for pedestrians and vehicles is provided on and around the Property through the reconstruction of the streetscape along 12th Street, SW, and through the Applicant's coordination with the abutting property owner to the north to restore the area of the former C Street right-of-way to its original configuration and alignment. Additional pedestrian connectivity will be gained through the wider sidewalk along 12th Street that results from the 10-foot setback provided to align with the existing Cotton Annex building.

c. Conflicts between vehicles and pedestrians shall be minimized;

The public space surrounding the Property has been designed to minimize conflicts between vehicles and pedestrians by. As shown in the Architectural Drawings, due to grade constraints and the function of roads surrounding the Property, 12th Street is technically the only true public street frontage available to the Project for vehicular access. Along the east and south, the Property is bounded by the 12th Street expressway and associated off ramp, respectively. As such, these roadways are not conducive for vehicular access to the Property. While the Applicant does have vehicular access to the Property along the north by virtue of a perpetual access easement across the abutting property, the Applicant is limited in the amount of vehicular access it can accommodate along the north, and the easement area will also serve as the main entrance to the hotel project proposed to the north. These constraints and considerations have significantly influenced the Project's parking and loading plans.

The Applicant is unable to locate both parking and loading access along the former C Street right-of-way/easement area. First, there are notable subsurface conditions that hinder the Applicant's ability to provide below-grade access to both parking and loading. Secondly, providing loading at the ground level would eliminate all of the ground-floor walk-out units proposed along the north side of the Project and would severely impact the aesthetic quality of the C Street streetscape and relationship of the new construction to the historic Cotton Annex. Finally, locating both parking and loading along the north side would significantly impact the main entrance of the proposed hotel project, and potentially other access issued given the offset of the easement area in relation to the C Street public right-of-way to the west of 12th Street, SW.

To minimize pedestrian conflicts, and impacts on the use of the adjacent property to the north, the Applicant has located the access to the below-grade parking off of the C Street easement area. The Applicant has also minimized the amount of parking that will be provided, thus greatly reducing the number of vehicle trips. The access to the proposed loading facilities has been located along 12th Street, SW, at the location of an existing curb cut. The location of the loading facilities will not adversely impact pedestrian circulation as it will allow for head-in/head-out loading, rather than the backing maneuvers that may be required if located along the C Street easement area. Furthermore, as stated above, the new construction portion of the Project will be set back approximately 10 feet from the property line along 12th Street, SW, thus providing additional visibility along the streetscape.

Finally, while maintaining safe pedestrian circulation is important on any street, 12th Street, SW, currently serves as more of a secondary street that already contains several curb cuts to the north and south of the Property. To the north, the proposed hotel project will require a curb cut to provide access to an existing WMATA substation. To the south, the existing building on the other side of Maryland Avenue has a sizable vehicular drop off area along 12th Street. Across 12th Street, the GSA Central Heating Plant has multiple curb cuts, none of which would be directly opposite the proposed loading access, and the existing buildings south of Maryland Avenue have multiple curb cuts and another vehicular drop off area.

- d. Unarticulated blank walls adjacent to public spaces shall be minimized through facade articulation;*

Despite its frontage on the 12th Street Expressway and associated off-ramp on the east and south, respectively, the proposed design treats all four sides of the building as primary facades. As shown in the Architectural Drawings, unarticulated blank walls have been minimized through the use of varying heights and masses, detailed façade articulation, and high-quality materials that relate to the Cotton Annex and to the surrounding context. In addition, further aesthetic interest and scale are provided to the public realm, and in particular at the ground plane, through the addition of oriel windows and canopy projections.

- e. Ground floor retail spaces shall have a clear height of least fourteen feet (14 ft.) if adjacent to major streets;*

As shown in the Architectural Drawings, the proposed retail space at the corner of 12th and D Street, SW, will have a minimum clear ceiling height of 14 feet.

- f. The project shall minimize impacts on the environment, as demonstrated through the provision of an evaluation of the proposal against GAR requirements and LEED Gold certification standards; and*

The Project will meet or exceed the required 0.2 GAR for the D-8 zone and will be designed to LEED Gold standards. A preliminary LEED Scorecard is included in the Architectural Drawings.

- g. Rooftop structures, architectural embellishments, and penthouses should be carefully located and designed to not compete with the architectural features of the Smithsonian Institution's original building when viewed from its center point on the National Mall and from 10th Street, S.W.*

The Project will have limited visibility from the Smithsonian Institution's original building. Notwithstanding, the Project's proximity to the Smithsonian Castle and the National Mall was taken into consideration when the proposed penthouse was being designed. As discussed above, the northern volume of the building has a fairly modest height in response to the Cotton Annex. Behind this initial volume, the height of the building increases along the east and south sides of the site. These taller volumes are the only portions of the building that contain a penthouse.

The design of the proposed penthouse is integrated with the overall design of the building. The penthouse will meet all required setbacks, thus reducing its visibility from the National Mall.

In addition, a simple horizontal detail between the habitable and mechanical portions of the penthouse will reduce the massing and stepping effect of the penthouse. Finally, the darker color of the penthouse cladding and mechanical screening will minimize reflectivity and allow this part of the building to further recede from view. Overall, to the extent the proposed penthouse is even visible, it will not compete with the architectural features of the Smithsonian Institution's original building.

3. Section 581.3

Construction or substantial renovation of a building or structure that would include an area restricted by Subtitle I § 575.2 may be permitted only if the Zoning Commission has given approval as a special exception under Subtitle X, Chapter 9, [subject to the determinations under Subtitle I § 581.3(a) – (c)]:

This section of the Regulations is not applicable since the Project does not, in any manner, include the construction of any building or structure, or any portion of a building or structure, above the grade of a street right-of-way that was included in the 1791 L'Enfant Plan for the City of Washington.

4. Section 581.4

When granting approval under 11-I DCMR §§ 581.1, 581.2, or 581.3, the Zoning Commission shall not reduce access to bonus density for a project that has demonstrated compliance with all applicable regulations.

As demonstrated herein, the Applicant complies with all applicable regulations.

5. Section 581.5

As part of the special exception to be considered under 11-I DCMR § 581, the Zoning Commission may hear and decide any additional requests for special exception or variance relief needed for the Property. Such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval.

The Applicant has done its best to design the Project in full conformance with all of the technical zoning requirements of the D-8 zone and within Subtitle C. However, due to constraints resulting from the presence of the historic Cotton Annex building, the presence of other subsurface constraints related to the WMATA tunnel, and the shape of the Property, the Applicant must request variance relief from the minimum open court width requirements of 11-I DCMR § 207.1, and the limitation on density within the footprint of a historic resource under 11-I DCMR § 200.3.

As discussed in detail below, the Applicant fully satisfies the burden of proof necessary to obtain the requested variance relief.

VI. ADDITIONAL ZONING RELIEF REQUESTED

The Applicant is seeking two variances pursuant to Subtitle X § 1000.1 of the Zoning Regulations for relief from the limitation on density within the footprint of a historic building

under Subtitle I § 200.3, and relief from the open and closed court dimensional requirements of Subtitle I § 207.1. Under D.C. Code §6-641.07(g)(3) and 11 DCMR X §1000.1, the Board of Zoning Adjustment is authorized to grant an area variance where it finds that three conditions exist:

- (1) the property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See *French v. District of Columbia Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). Pursuant to Subtitle I § 581.5, the Commission is empowered to hear and decide the requested variance relief as part of its special exception review of the Project. As discussed below, the Applicant meets the three prongs of the area variance test for the requested density and court relief.

- (1) *the property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;*

The phrase “exceptional situation or condition” may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). In addition, the exceptional situation or condition can pertain not only to the land, but also to the existence and configuration of a building on the land. See *Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Ultimately, the term “extraordinary or exceptional condition” was “designed to serve as an additional source of authority enabling the Board to temper the strict application of the zoning regulations in appropriate cases.” *DeAzcarate v. D.C. Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (1978).

The requested variances from the minimum open court requirements and limitation on density within the footprint of a historic resource are directly related to exceptional conditions that are unique to the Property. First, the Property boundary has an odd chamfer at the northeast corner due to the presence of the existing 12th Street expressway. This odd angle of the lot line is a result of a 1969 highway dedication that condemned a small corner of the Property to accommodate construction of the expressway. Prior to the condemnation, this particular corner of the Property formed a 90 degree angle. The request relief is also due to the unique presence of the WMATA tunnel that runs below the northeast portion of the Property which affects the constructability of the northeast portion of the project. Finally, the presence of historic Cotton Annex building is another exceptional condition of the Property. The Cotton Annex is a designated historic landmark that, with the exception of a noncontributing egress stair on the south side of the building, must be

preserved and rehabilitated as part of the project. While the presence of the historic landmark on the Property is an exceptional circumstance unto itself, the one-story transformer vault located at the southwest corner of the historic structure is a particularly unique aspect of the structure that contributes to the Applicant's need for variance relief.

(2) *the owner would encounter practical difficulties if the zoning regulations were strictly applied; and*

As discussed below, the presence of the exceptional conditions described above results in a practical difficulty to the Applicant should the Zoning Regulations be strictly applied. To meet the standard for practical difficulty, "[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A. 2d 535, 542 (D.C. 1972). In area variances, such as those requested in this case, applicants are not required to show "undue hardship" but must satisfy only "the lower 'practical difficulty' standards." *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1365 (D.C. 1992), citing *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). Finally, it is well settled that the BZA may consider "... a wide range of factors in determining whether there is an 'unnecessary burden' or 'practical difficulty'..." *Gilmartin*, 579 A.2d at 1171, citing *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A. 2d 326, 327 (D.C. 1976). See also, *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992). Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible.

Variance from open court requirements (11-I DCMR § 207.1)

The strict application of the open court requirements would result in an unnecessarily burdensome practical difficulty resulting for the Applicant that is directly a result of the unique shape of the Property and subsurface constraints imposed by the WMATA tunnel. Constructing the building to the northeast lot line with an angled façade in order to eliminate the open court would unnecessarily complicate the structure at this particular corner the building, and require additional mass to a portion of the building where the massing has been purposely reduced in response to the historic Cotton Annex and comments from CFA. Further, modifying the building in order to achieve a compliant open court would also unnecessarily complicate the structure, and adversely impact the relationship between the new construction and existing Cotton Annex. Specifically, to minimize curb cuts on 12th Street the Applicant has located the entrance to the parking garage at the northeast corner of the building off the C Street easement area. In order to meet drive aisle and clearance requirements, column supports needed to span the garage ramp are located within the non-compliant open court. If the Applicant was required to meet the minimum width requirement for this particular court, the column supports would likely encroach into the garage ramp, which would require the Applicant to relocate the garage entrance or request another area of relief.

Variance from density limitation within historic resource footprint (11-I DCMR § 200.3)

The strict application of the density limitation with a historic resource footprint would give rise to a significant practical difficulty for the Applicant. As discussed above, the original design

of the Cotton Annex was never fully constructed. As shown on Sheets 6 and 7 of the Architectural Drawings, the original design was a rectangular-shaped building with a central closed court surrounded by a double loaded corridor. However, only the first phase of the administrative portion of the building and the warehouse were constructed. A one-story transformer vault was also constructed at the southern end of the building. *See* Sheet 9 of the Architectural Drawings.

The strict application of the density limitation within the historic footprint would result in the Applicant not being able to connect to the existing building on the south side due to the existing one-story transformer. As shown on Sheets 6 and 7 of the Architectural Drawings, had later phases of the original Cotton Annex been completed the area above the transformer vault would have contained office space and a corridor to connect to the dead end corridor that exists at the south end of the existing building. Today, the existing one-story transformer vault is now considered part of the historic building's footprint, and is subject to the restriction on increasing density within said historic footprint. As shown in the Architectural Drawings, the general footprint of the proposed building is similar to the original design of the Cotton Annex. The building generally has a rectangular footprint that contains a double-loaded corridor surrounding a central closed court up to a certain height. As required for historic preservation purposes, the proposed design retains the original corridor configuration in the existing Cotton Annex, and extends this configuration through the new construction. An inability to connect to the existing corridors at the south end of the building would result in a loss of dwelling units as the Applicant would be required to connect to the existing building in another way that does not go above the existing transformer. This would also unnecessarily require inefficient circulation improvements (additional corridors, means of egress, elevators, etc.) to meet building code requirements.

- (3) *the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.*

The requested variance relief will not cause substantial detriment to the public good, and will not substantially impair the Zoning Regulations. Both areas of variance relief are *de minimis*, and will have no impact on the public good. The location of the non-compliant open court is located at the terminus of the C Street easement area and adjacent to the 12th Street expressway where there is no pedestrian circulation. The purpose of minimum court requirements is to ensure adequacy of light and air into the portions of buildings located along courts. Given its location at the northeast corner of the building, and adjacent to the C Street easement area (80 feet wide) and the 12th Street Expressway (approx. 111 feet wide), the non-compliant width of the open court will have no impact on the adequacy of light and air to the dwelling units located in this particular portion of the building.

The variance from the density limitation within the historic footprint of the Cotton Annex will not be detrimental to the public good. Indeed, impacts to the public good will be beneficial as the variance relief will facilitate the redevelopment/rehabilitation of the Cotton Annex into a vibrant, residential building in an area of the city in dire need of renewed vitality through a wider mix of uses. This density limitation variance will also not substantially impair the purpose, intent, and integrity of the Zoning Regulations. This regulation is intended relieve development pressure from historic resource and protect them from being overbuilt. As is clearly demonstrated in the Architectural Drawings, the additional density proposed within the existing building footprint is

extremely minor, and only within the portion of the footprint containing the one-story transformer vault. In fact, the portion of the proposed design that is within the footprint of the existing transformer vault is similar to what was originally proposed above the transformer vault in the original design for the Cotton Annex.

VII. COMMUNITY OUTREACH

The Applicant has initiated discussion with Advisory Neighborhood Commission (“ANC”) 6D regarding the Project and this application. The Applicant intends to make a formal presentation of the Project to ANC 6D at its January or February 2021 public meeting, depending upon availability.

On November 16, 2020, the Applicant attended a virtual meeting with current ANC 6D01 Single Member District representative Gail Fast, sharing plans that have been submitted to the Commission of Fine Arts and reviewing design elements of the Project and next steps. The Applicant met again with ANC 6D01 SMD Fast on December 18, 2020, updating her on the progress of the design following its November 19 presentation at the CFA public meeting and subsequent feedback received from CFA professional staff. SMD Fast indicated preliminary general support for the Project and noted appreciation for color changes the Applicant made to the upper portion of the building.

On December 21, the Applicant spoke with Andrew Bossi, who will become the new ANC 6D01, in January 2021, sharing plans for the Project with him. The conversation included confirmation that the Project will comply with inclusionary zoning requirements and discussion of loading and plans for “C Street”.

The Applicant has also spoken regularly over the course of the last several months with GSA representatives, including the Heating Plant manager, as well as the owner of Lot 807 to the north of the site.

VIII. WITNESSES

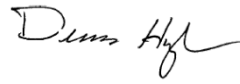
At the public hearing for this application, the Applicant intends to present testimony in support of the special exception approval and variance requests, including from experts in architecture, urban planning and transportation analysis. Witness testimony outlines and resumes for expert witnesses are attached hereto.

IX. CONCLUSION

For the reasons stated above, the Project satisfies the test for special exception approval related to new buildings and exterior renovations in the D-8 zone and for the requested area variances related to court dimension and building density limitation for historic resources. The Application satisfies the filing requirements of the Zoning Regulations. Therefore, the Applicant respectfully requests that the Zoning Commission schedule this application for public hearing and there approve this application.

Respectfully Submitted,

HOLLAND & KNIGHT LLP



Dennis R. Hughes

Attachments