

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 16-06  
Z.C. Case No. 16-06  
Jemal's Lazriv Water, LLC  
(Capitol Gateway Overlay District Review @ Square 666, Lot 15)  
July 7, 2016**

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on June 9, 2016, to consider an application filed by Jemal's Lazriv Water, LLC ("Applicant") for review and approval of a mixed-use redevelopment project at 1900 Half Street, S.W. (Lot 15 in Square 666) (the "Property"), pursuant to §§ 1603 and 1610 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR" or "Zoning Regulations"), which apply to new construction or uses in the CG Overlay on any lot located within the CG/W-2 Zone District. The application also requested (i) a variance from the maximum building height requirements of 11 DCMR § 1603.4; (ii) a variance from the loading requirements of 11 DCMR § 2201.1; and (iii) special exception relief to provide multiple penthouses at multiple heights (§§ 411.6 and 411.9) and to provide penthouses that do not comply with the setback requirements from an open court (§ 411.18(c)(5)). Relief was also requested pursuant to 11 DCMR §§ 936.1 and 1601.7, which make 11 DCMR § 411 applicable to penthouses in the Waterfront and CG Overlay Districts, respectively. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

**FINDINGS OF FACT**

1. On March 23, 2016, the Applicant filed an application for review and approval of a mixed-use building pursuant to 11 DCMR §§ 1603 and 1610, which apply to new construction or uses in the CG Overlay on any lot located within the CG/W-2 Zone District. The Applicant also requested variance and special exception relief from the maximum building height requirements (11 DCMR § 1603.4); the loading requirements (11 DCMR § 2201.1); and the penthouse requirements (11 DCMR §§ 411.6, 411.9, 411.18(c)(5), 936.1, and 1601.7).
2. The Applicant filed a prehearing submission in support of the application on May 20, 2016 ("Prehearing Submission"). (Exhibits ["Ex."] 14, 15-15C.) The Prehearing Submission included a statement summarizing the application's compliance with the applicable provisions of the CG Overlay regulations and justification for the requested areas of variance and special exception relief. The prehearing submission also included updated architectural drawings, a Comprehensive Transportation Review ("CTR")

Report, and resumes of expert witnesses that might testify in support of the application at the public hearing.

3. On May 27, 2016, the Office of Planning (“OP”) submitted a report indicating its support for the application subject to the following: (i) commitment to a higher level of LEED; (ii) resolution of the shoreline treatment with the District Department of Transportation (“DDOT”), the District Department of Energy and Environment (“DOEE”), and the Federal Emergency Management Agency (“FEMA”); (iii) submission of additional details regarding the terrace spaces at the Anacostia Riverwalk Trail (“Riverwalk”), including materials, views, and sections; and (iv) final design of the Riverwalk. The OP report stated that the application addressed the evaluation criteria for the CG Overlay and noted its support for the requested height and loading variances and the penthouse special exception. (Ex. 16.)
4. On May 31, 2016, DDOT submitted a report indicating that it had no objection to the application with the following conditions:
  - a. Provide a more robust transportation demand management (“TDM”) plan with the following elements:
    - i. Provide a TransitScreen or similar device displaying real-time transportation schedules;
    - ii. Provide an initial one-year Capital Bikeshare annual membership to all residents; and
    - iii. Provide a Capital Bikeshare station, including full cost of installation and the first year of operations and maintenance;
  - b. Construct a sidewalk along at least one side of Half Street, between T Street and S Street, preferably the east side;
  - c. Design and construct an approximately 200-foot cycle track to be separated from the street between the Riverwalk and Water Street along T Street; and
  - d. Design and install appropriate pavement marking and signage for both blocks of Water Street to ensure safe operations, with a curb extension and striping at the T Street intersection designed as needed to ensure roadway widths on each block match.

The report also expressed the agency’s expectation that the Applicant continue to work with DDOT on design of the public realm surrounding the site, providing an updated design at the southeast corner of the Half/Water intersection, the reconstruction of Half, T, and Water Streets, and preparing a loading management plan. (Ex. 18.)

5. On May 31, 2016, DOEE submitted a report that generally addressed development issues that are part of the early stages of design and entitlement of the project. The major issues included the project's level of commitment to sustainability and LEED certification, the design and configuration of the Riverwalk trail, and items related to floodplain management and shoreline treatment. (Ex. 17.)
6. The Applicant filed a supplemental prehearing submission on June 8, 2016, wherein it requested a waiver from 11 DCMR § 3013.8 in order for the Commission to accept, less than 20 days prior to the public hearing, additional information responding directly to issues raised in the OP, DDOT, and DOEE reports. (Ex. 22-22D.) The supplemental submission included: (i) a description of the Applicant's commitment to LEED-Silver; (ii) the Applicant's proposed process for removing the building from the 100 year floodplain, consistent with policies and procedures set forth by FEMA and DOEE; (iii) revised architectural sheets correcting inconsistencies related to the design and materials of the residential terraces facing the Anacostia River; (iv) revised architectural sheets showing the proposed width and design of the Riverwalk trail; and (v) a commitment to DDOT that the Applicant agreed to each of its conditions, including a revised site plan and public space improvement diagram showing the extent of the public space improvements outside of the Property.
7. The Commission held a hearing on the Application on June 9, 2016. Parties to the case included the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Property is located. Proper notice of the hearing was provided by the Office of Zoning pursuant to 11 DCMR § 3015.
8. Witnesses appearing at the hearing on behalf of the Applicant included Paul Millstein and Andrea Gourdine of Douglas Development; Kevin Sperry of Antunovich Associates; Jeff Lee of Lee & Associates; and Jim Watson of Gorove/Slade Associates. Mr. Sperry, Mr. Lee, and Mr. Watson were recognized by the Commission as experts in their respective fields of architecture, landscape architecture, and transportation engineering.
9. On June 20, 2016, the Applicant submitted proposed Findings of Facts and Conclusions of Law and a consolidated set of architectural plans and elevations ("Plans") (Ex. 28, 29A1-29A3.)
10. At its July 7, 2016 public meeting, the Commission took final action to approve the application. The Commission determined that the project satisfies all applicable requirements of the CG Overlay District.

### **Project Overview**

11. The Property consists of Lot 15 in Square 666. Square 666 is located in the southwest quadrant of the District and is bounded by T Street to the north, the Anacostia River to the east, U Street to the south, and Water Street and Half Street to the west. The Property is the only lot in Square 666 and has an angled rectangular shape with a total land area of approximately 110,988 square feet.

12. The Property is presently improved with an existing and mostly vacant nine-story office building that was constructed circa 1976. The existing building has a height of 90 feet and approximately 665,928 square feet of gross floor area with a density of 6.0 floor area ratio (“FAR”). On-site parking for 691 vehicles is located within the building and exterior on-site loading is located on the Property to the north of the building. The building was originally constructed for use by the General Services Administration for Federal occupancy and was used as an office building for several decades.
13. The Applicant proposed to redevelop the Property by renovating and adaptively reusing the existing building as a mixed-use apartment house with approximately 427 residential units and approximately 24,032 square feet of retail use. In order to provide a quality residential building and take full advantage of its location along the Anacostia River waterfront, the Applicant proposed to remove significant portions of the existing building by cutting out approximately 215,217 square feet of gross floor area (1.9 FAR). Removing density from the building in this manner results in the creation of two large open courts and a sideways “E”-shaped building that faces the river.
14. The renovated building will include approximately 450,711 square feet of gross floor area (4.06 FAR). The Applicant will maintain two and a half levels of the existing below-grade parking garage that will accommodate 312 vehicles (300 zoning-compliant spaces and 12 tandem spaces), with ingress and egress from T Street. On-site loading will be provided in its existing location along T Street, adjacent to the parking entrance, such that all vehicular access is consolidated on the north side of the Property. The overall building height will remain at 90 feet for the majority of the building, except for a new two-foot, 3-inch roof slab located on the center portion of the roof to reinforce the new rooftop mechanical equipment and amenity space, and a new five-foot pool deck.
15. The existing building is skinned in a brutal concrete panel with a punched window system, which will be replaced with a new curtain wall and metal panel system, suitable for a residential tower with exterior balconies, operable windows, and high performing energy efficiency. The exterior skin of the upper portion of the renovated building is a collection of de-saturated, cool colors, intended to create a visually interesting palette for the burgeoning neighborhood. At its base, the building will be skinned in a panelized rain screen, more natural and earth-toned in both coloration and tactility. The upper levels of the building will be set back considerably to create public and private exterior spaces, all partially shaded by light, open trellises. These details will create a visual interest towards the open area of the Anacostia River, while maintaining a more urban expression of density towards the city. The floor plates will be sculpted to convert the office building into an efficient residential layout, providing optimum light and views from every unit and two large public green spaces above the retail podium for public amenities such as green areas and gathering spaces.
16. The project includes significant sustainable elements, including electric vehicle charging stations in the garage, significant open space and green roofs, low-plumbing fixtures, bio-retention structures, drought-tolerant plantings and high-efficiency irrigation equipment,

recycled and regional materials with low-emitting coatings, adhesives, and flooring, and ample long- and short-term bicycle storage for residents, visitors, retail employees, and retail customers. The Applicant is also reusing significant portions of the existing building's structural floors, walls, roof, and mechanical equipment, which will reduce production and use of new materials.

17. The Applicant will construct a major portion of the Anacostia Riverwalk, which will emphasize the Property's connection to the Anacostia River and enhance the interface between the built environment and the tidal landscape. The Riverwalk is a separated, multi-use trail that has been designed to safely accommodate pedestrians and cyclists along the Anacostia River and through connections back into the infrastructure of the existing street grid surrounding the Property. The portion of the Riverwalk adjacent to the Property will orient a pedestrian path closest to the River, with a wide landscape buffer between the bicycle-path located closer to the building. The pedestrian portion of the Riverwalk will incorporate seating elements to allow for moments of rest and observation. A larger plaza will be provided at the termination of T Street along the River to create an overlook towards the River and provide a connection to future extensions of the Riverwalk to the north.

### **Capitol Gateway Overlay District Design Requirements**

18. Pursuant to 11 DCMR §§ 1610.1 and 1610.2, for property located in the CG/W-2 Zone District, all proposed uses, buildings, and structures, or any proposed exterior renovation to any existing buildings or structures that would result in an alteration of the exterior design, are subject to review and approval by the Commission in accordance with the provisions of 11 DCMR §§ 1610.3 through 1610.9. In this case, 11 DCMR §§ 1610.5 and 1610.6 are not applicable. Pursuant to 11 DCMR § 1610.3, an Applicant requesting approval under the CG Overlay District review provisions must demonstrate that the proposed building's architectural design, siting, landscaping, sidewalk treatment, and operation are of a superior quality, pursuant to the design and use requirements of 11 DCMR §§ 1610.3(a)-(f). Finally, 11 DCMR § 1603 sets forth a number of specific requirements that apply to all new buildings, structures, or uses within the CG/W-2 Zone District. As described below, the Commission finds that the project is consistent with each of these requirements and with all of the applicable purposes of the CG Overlay.

### **The Project Meets the Requirements of 11 DCMR § 1603**

19. The project is subject to the requirements of 11 DCMR § 1603 because it involves a new use within the CG/W-2 Zone District.<sup>1</sup> The Commission finds that the project meets the requirements of 11 DCMR § 1603.

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<sup>1</sup> Subsections 1603.2 and 1603.3 do not apply in this case because the building was constructed prior to January 7, 2005. Subsection 1603.5 does not apply because the Applicant is not requesting additional on-site or off-site bonus density earned for setbacks.

20. Subsection 1603.4 permits a maximum building height of 70 feet and a maximum site density of 5.0 FAR. However, the existing building has a height of 90 feet and the site has an existing density of 6.0 FAR. In order to successfully adaptively reuse the existing building, the Applicant will maintain the existing building height of 90 feet, except for a small portion of the roof which will be slightly taller due to installation of a new roof slab and pool deck. The Applicant will simultaneously reduce the Property's density from 6.0 FAR to 4.06 FAR by removing approximately 215,217 square feet of gross floor area from the building.
21. The project complies with 11 DCMR § 1603.4(a) because it will include approximately 3.36 FAR of residential development, which is more than the 2.0 FAR minimum required.
22. Pursuant to 11 DCMR § 1603.4(b), the Applicant requested that the Commission preserve the Applicant's right to transfer any offsite bonus density credits that are created through the project.
23. Pursuant to 11 DCMR § 1603.4(c), the Applicant will comply with the provisions of 11 DCMR §§ 1709.6 through 1709.12 and § 1709.14 regarding transferable development rights.

#### The Project Meets the Requirements of 11 DCMR § 1610

24. Pursuant to 11 DCMR §§ 1610.1 and 1610.2, for property located in the CG/W-2 Zone District, all proposed uses, buildings, and structures, or any proposed exterior renovation to any existing buildings or structures that would result in an alteration of the exterior design, are subject to review and approval by the Commission in accordance with the provisions of 11 DCMR §§ 1610.3 through 1610.9.<sup>2</sup>
25. Subsection 1610.3 of the CG Overlay provides that in addition to demonstrating that the building meets the standards set forth in 11 DCMR § 3104, an applicant requesting approval under the CG Overlay provisions must also prove that the proposed building meets the requirements of 11 DCMR §§ 1610.3(a) through (f). Subsection 3104.1 of the Zoning Regulations provides that special exceptions should be granted when "the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." (11 DCMR § 3104.1.)
26. Subsection 1610.3 further provides that the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation of the proposed building must comply

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<sup>2</sup> Subsections 1610.5 and 1610.6 are not applicable because they regulate buildings with frontage on Half Street, S.E., south of M Street, S.E., or on Front Street, S.E., south of M Street, S.E. (§ 1610.5) and on South Capitol Street, S.E. (§ 1610.6), which do not apply to the Property.

with the specific requirements set forth in that section, and must help achieve the objectives of the CG Overlay District, as set forth in 11 DCMR § 1600.2.<sup>3</sup> The Commission finds that the proposed building meets the requirements of 11 DCMR § 1610 and is consistent with all of the applicable purposes of the CG Overlay.

27. The project will help assure development of the area with a mixture of residential and retail/service uses, and a suitable height, bulk, and design, as generally indicated in the Comprehensive Plan and recommended by planning studies of the area. (11 DCMR § 1600.2(a).)
28. The project encourages a variety of support and visitor-related uses through development of new retail/service uses that will increase visibility and walkability to the Property. Construction of the Riverwalk will draw visitors to the area to take advantage of recreational opportunities and views of the River that were not previously available. Safe pedestrian and bicycle connections to the surrounding streets will be provided through the implementation of new widened sidewalks, bicycle lanes, street furniture, pedestrian-oriented lighting, crosswalks, and landscape buffers. (11 DCMR § 1600.2(b).)
29. The project provides an appropriate massing along the Anacostia River and includes significant step-backs and height step-downs to maximize views and create an aesthetically pleasing design. The project includes continuous public open space along the waterfront through the creation of the Riverwalk, with ample space for pedestrians, cyclists, and landscape elements. (11 DCMR § 1600.2(d).)
30. The project will help achieve the objectives of the CG Overlay district. It will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the neighboring property in accordance with the Zoning Regulations and Zoning Map. The Commission finds that the project assures development of the area with a mixture of uses and a suitable height, bulk, and design. (11 DCMR § 1610.3(a).)
31. The project will help achieve the desired mix of uses in the CG Overlay as set forth in 11 DCMR §§ 1600.2(a) and (b), with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail, or service uses. The Commission finds that the new residential and retail/service uses will help achieve the goals of the CG Overlay. (11 DCMR § 1610.3(b).)
32. The Commission finds that the height, bulk, and architectural design of the building, as shown on the Plans, will be in harmony with the context of the surrounding neighborhood and will significantly improve the adjoining street patterns and circulation. The renovated building provides distinct façade articulation at each elevation and creates an innovative design that connects the building to the surrounding street frontages and the Anacostia River. The Applicant will provide new streetscape improvements on T Street, Half Street, and Water Street, which will support pedestrian and bicycle infrastructure where none

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<sup>3</sup> Subsections 1600.2(c) and (e) through (i) are not applicable in this case.

currently exist and which will be consistent with the vision for the streetscape set forth in the Buzzard Point Urban Design Framework Plan (“Buzzard Point Plan”), published by the Office of Planning in July, 2014. Moreover, the design and construction of the Riverwalk will help guide future development to this portion of the southwest waterfront. (11 DCMR § 1610.3(c).)

33. The project will minimize potential conflicts between vehicles and pedestrians. Consolidated access for parking and loading will be located on the north side of the Property, which eliminates the existing parking access point at the south side of the Property and reduces the width of the existing curb cut on the north side of the Property. Trash operations will occur from the loading area. All loading and trash trucks will be able to access the loading docks without negatively impacting public space between the docks and the nearest DDOT-designated truck routes. Trucks will also be able to make front-in and front-out maneuvers. In addition, a two-way separated cycle track will connect T Street to the Riverwalk on the north side of the building, which will minimize potential bicycle conflicts with parking and loading operations. (11 DCMR § 1610.3(d).)
34. The redesigned building will minimize unarticulated blank walls adjacent to public spaces by offering extensive façade articulation across all of its elevations. Each façade is distinctly and extensively conveyed through irregular patterns and a mixture of materials, fenestration, and colors. (11 DCMR § 1610.3(e).)
35. The project will be designed with sustainability features and will achieve LEED-Gold certification, such that the building will not have significant adverse impacts on the natural environment. (11 DCMR § 1610.3(f).)
36. The project incorporates suitably designed public open spaces along the waterfront that are inviting to the public, easily accessible, and particularly appropriate for the Property’s unique location. At the request of the ANC, the Applicant is also providing a large dog park on the Property adjacent to the Riverwalk so that building residents have a convenient and aesthetically pleasing location to let their dogs run. (11 DCMR § 1610.4(a).) The Plans incorporate open space treatments and public space access and use for the Riverwalk (11 DCMR § 1610.4(b)), as well as a view analysis that assesses the views and vistas set forth in 11 DCMR § 1610.4(c). The Commission finds that since the building’s height and mass already exist along the River and Half Street, the building alterations will have no detrimental impact on the views and vistas of the identified monumental properties and focus areas.

### **Variance Requests from the Height and Loading Requirements**

37. Pursuant to 11 DCMR § 1610.7, the Commission may hear and decide any additional requests for variance or special exception relief needed for the Property, and such requests shall be advertised, heard, and decided together with the application for review and approval for compliance with the CG Overlay provisions. Pursuant to this provision, the Applicant requested area variances from: (i) the maximum building height limitations



set forth in 11 DCMR § 1603.4; and (ii) the loading requirements set forth in 11 DCMR § 2201.1.

38. The test for variance relief is three-part: (1) demonstration that a particular piece of property is affected by some exceptional situation or condition; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or substantial impairment of the zone plan. The Commission finds that variance relief is appropriate in this application.

Exceptional Situation or Condition

39. The Commission finds that the Property is exceptional due to the presence of the existing nine-story office building, which the Applicant will adaptively reuse and renovate as part of this application. The existing building is exceptionally large, with existing heights, density, setbacks, core elements, column spacing, siting, ingress and egress locations, ceiling heights, and parking and loading facilities, much of which cannot be modified or redesigned without significantly altering or destroying the building's structural integrity. The Applicant proposes to remove significant portions of the building's gross floor area in order to provide appropriate massing, create enhanced public access to the River, maximize views in all directions, and appropriately convert the office building to residential use. In doing so, the Applicant has to maintain the majority of the existing structure, which has a direct impact on the ability to comply with the height and loading requirements.
40. The Property itself is also exceptional due to its sloping topography, which ranges from a low point of approximately nine feet in elevation along the River to a high point of approximately 19.29 feet in elevation along Water Street. The Property is also exceptional due to its location directly adjacent to the Anacostia River.

Practical Difficulty

41. The Commission finds that strict application of the Zoning Regulations would result in a practical difficulty to the Applicant because it would significantly constrain the Applicant's ability to adaptively renovate the existing building into a new predominately residential mixed-use project that takes advantage of the Riverfront and incorporates significant new amenities and public access points to the new Riverwalk trail.
42. Height. The Applicant proposes to increase the existing building height of 90 feet in two locations: (i) construction of a two-foot, three-inch-thick roof slab to reinforce the existing roof structure. This roof slab will occupy approximately 20% of the roof area; and (ii) construction of a five-foot-tall pool deck. The pool deck will occupy approximately four percent of the roof area.
43. The Commission finds that the Applicant has to install the two-foot, three-inch roof slab to support the heavier rooftop load that results from the new mechanical equipment and

residential amenity spaces. Reinforcement methods cannot be utilized under the roof slab without compromising the ceiling height below. If the Applicant reinforced the roof without raising it, the ceiling height on the upper-most floor would be less than the minimum ceiling height permitted by the Building Code. The Commission also finds that a five-foot pool deck is required to provide a 42-inch-deep pool. For new construction, such a thick pool deck would not be required; however, in this case, the Applicant is preserving the existing roof slab, which requires a deck to be built above the existing roof slab into which the pool will be inserted. Therefore, the Commission finds that strict compliance with the height requirements would result in a practical difficulty to the Applicant.

44. Loading. The Applicant proposes to maintain the building's existing loading facilities, thus requiring a variance to: (i) provide two loading berths where three berths are required; (ii) reduce the size of the required 55-foot loading berth to 40-feet; and (iii) provide one service/delivery space where two spaces are required.
45. The Commission finds that it is practically difficult for the Applicant to meet the requirements of 11 DCMR § 2201.1 because the Applicant is reusing the building's existing loading facilities, which complied with the Zoning Regulations that were in effect when the building was constructed. Providing all of the required loading facilities at their minimum required dimensions would result in a significantly wider curb cut to provide access and the elimination of the proposed cycle track along T Street, which would increase potential pedestrian/bicycle/vehicle conflicts. Moreover, in order to back a 55-foot truck into the loading dock, the truck would need to use the full width of the street, including the bicycle lane, to make the maneuver. Providing the required loading facilities would also require partial demolition of the existing building, since there is insufficient land area between the curb and the building façade to add more or larger exterior loading facilities. Therefore, the Commission finds that strict compliance with the loading requirements would result in a practical difficulty to the Applicant.

*No Substantial Detriment to the Public Good or Zone Plan*

46. The Commission finds that the requested height and loading relief can be granted without substantial detriment to the public good and without substantial impairment to the zone plan. The proposed height increase will only be located in the center leg of the "E"-shaped building, with approximately 76% of the roof area remaining at 90 feet. Moreover, the increased height is nominal, is significantly set back from the roof edge, and will allow for increased use and enjoyment of the roof by building residents. Due to the mechanical needs of the very large, adaptively reused building, additional mechanical equipment is required to be located on the roof, which necessitates the two-foot, three-inch slab to provide structural support to accommodate additional HVAC units for both residential and commercial uses.
47. The Commission also finds that the existing loading facilities are adequate to serve the project's anticipated loading demand. The residential and retail uses will realistically be able to share the loading facilities with no detriment to the public good or zone plan.

Given the size of the residential units, residents are not expected to use 55-foot trucks to move-in or move-out of their units, thus making a 40-foot residential loading berth appropriate in this case.

### **Special Exception Relief from the Penthouse Requirements**

48. Special exception approval is required for: (i) multiple penthouses (11 DCMR § 411.6) to provide a separate designated outside air system (“DOAS”) unit on the north leg of the building that is not connected to the main penthouse; (ii) penthouses with multiple heights (11 DCMR § 411.9) because the DOAS unit and the two separate stair tower enclosures have different heights from the main penthouse; and (iii) penthouse setback (11 DCMR § 411.18(c)(5)) because the three existing stair towers that provide access to the roof are not set back from the open courts in the center of the building. Relief is also required pursuant to 11 DCMR §§ 936.1 and 1601.7, which make 11 DCMR § 411 applicable to penthouses in the Waterfront Zone Districts and the CG Overlay District, respectively.
49. Under 11 DCMR § 411.11, the Board of Zoning Adjustment (“BZA” or “Board”) may grant special exception relief under 11 DCMR § 3104 from 11 DCMR §§ 411.6, 411.9, and 411.18 upon a showing that: (a) operating difficulties such as meeting Building Code requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly, or unreasonable; (b) the intent and purpose of this chapter and this title will not be materially impaired by the structure; and (c) the light and air of adjacent buildings will not be affected adversely. The Board, and by extension the Commission pursuant to 11 DCMR § 1610.7, has the power to approve penthouse special exceptions under 11 DCMR § 411.11.
50. The Commission finds that the roof plan is consistent with the purpose and intent of the Zoning Regulations. Providing a single penthouse would result in operating difficulties for the residential uses in the building. The Applicant cannot locate the northern DOAS unit within the larger mechanical screen wall of the main penthouse because it must be physically separated from the second DOAS unit, which is located within the main penthouse. The separation is necessary because the two DOAS units utilize separate duct work to provide fresh air into the residential units. The duct work is located in the ceilings of the building’s corridors. If both DOAS units operated from the same side of the roof, the duct work feeding fresh air from the roof into the units would have to be significantly larger (approximately two feet deep), which would result in ceiling heights below the seven-foot, six-inch minimum clearance that is required by the Building Code for the corridors.
51. The Applicant could theoretically connect the main penthouse to the separate DOAS unit by extending a long screen wall or covered structure over the majority of the roof. However, doing so would add significantly more massing to the roof, increase visibility

of the penthouse, and draw attention to the roof, which is inconsistent with the intent of the penthouse regulations and contradictory to the Zoning Regulations.

52. The Commission also finds that providing penthouses with multiple heights is reasonable in this case. Although the DOAS unit and the two separate stair tower enclosures have different heights from the main penthouse, as measured from the roof upon which they sit, the elevations are very similar and/or exact. The DOAS unit is at elevation 123.29 feet; the separate stair towers are at elevation 123.54 feet; and the main penthouse is at elevations 123.29 feet, 123.54 feet, and 127.63 feet. Therefore, the Commission finds that the multiple heights will not be perceived from the street and thus notes that the relief will not result in any adverse impacts.
53. Finally, the Commission also finds that providing 1:1 setbacks for the internal stair towers would result in operating difficulties. The stair towers are existing egress stairs within the building that are presently located in the core (middle) of the building. Because the Applicant is cutting out major interior portions of the building, the stair towers will become exposed at the building line, and therefore will not be set back from the open court wall at the roof level. However, these penthouses are set back at least 1:1 from all front, rear, and side building walls, including the river-facing facades, such that the setback relief will not result in any negative impacts, will not adversely affect the light and air of any future adjacent buildings, and will not impair the intent and purpose of the Zoning Regulations.

### **OP Report**

54. By report dated May 27, 2016, OP recommended approval of the application. (Ex. 16.) OP also testified in support of the application at the public hearing. In its report, OP stated that the application successfully addressed most of the evaluation criteria for the CG Overlay and noted its support for the requested height and loading variances and penthouse special exception. The OP report conditioned its support on the following:
  - a. Commitment to a higher level of LEED;
  - b. Resolution of the shoreline treatment with DDOT, DOEE, and FEMA;
  - c. Submission of additional details regarding the terrace spaces at the Riverwalk, including materials, views, and sections; and
  - d. Final design of the Riverwalk.
55. At the public hearing, the Applicant committed to achieving LEED-Gold certification, which addressed OP's concern regarding improved environmental design.
56. As described in the Applicant's supplemental prehearing submission (Ex. 22), the Applicant addressed OP's concern regarding shoreline treatment by removing the building from the 100-year floodplain. The Applicant will: (i) re-grade the shoreline with

fill material inside the property line; (ii) raise the lowest level of residential units to 14 feet in elevation, which is the elevation of the 500-year floodplain; and (iii) submit a Letter of Map Amendment (“LOMA”) to FEMA to officially have the building removed from the floodplain. DOEE and FEMA both confirmed that this is the correct policy and procedure for removing the building from the floodplain.

57. As shown in the updated sheets submitted with the Applicant’s prehearing submission (Ex. 22D), the Applicant addressed OP’s concerns related to the residential terraces facing the Riverwalk (*see* Sheets 9, 13-15, 28, 30-33, and 36 of the Plans). These sheets provided the views, materials, and sections requested by OP, and are internally consistent within the Plans.
58. Finally, as shown on Sheet 40 of the Plans, the Applicant has worked with OP to provide the optimal dimensions for the Riverwalk design: (i) 10-foot pedestrian trail; (ii) five-foot landscaped area; and (iii) 10-foot bicycle trail. This width is achieved in all locations of the Riverwalk except for approximately 113 linear feet at the southeast corner of the Property, where either (i) an eight-foot pedestrian trail, five-foot landscaped area, and 10-foot bicycle trail is provided, or (ii) an eight-foot pedestrian trail, three-foot landscaped area, and 10-foot bicycle trail is provided. OP indicated its support for this design at the public hearing.

### **DDOT Report**

59. By report dated May 31, 2016, DDOT indicated that it has no objection to the application with the following conditions:
  - a. Provide a more robust TDM plan with the following elements:
    - i. Provide a TransitScreen or similar device displaying real-time transportation schedules;
    - ii. Provide an initial one-year Capital Bikeshare annual membership to all residents; and
    - iii. Provide a Capital Bikeshare station, including full cost of installation and the first year of operations and maintenance;
  - b. Construct a sidewalk along at least one side of Half Street, between T Street and S Street, preferably the east side;
  - c. Design and construct an approximately 200-foot cycle track to be separated from the street between the Riverwalk and Water Street along T Street; and
  - d. Design and install appropriate pavement marking and signage for both blocks of Water Street to ensure safe operations, with a curb extension and striping at the T

Street intersection designed as needed to ensure roadway widths on each block match. (Ex. 18.)

60. In the Applicant's supplemental prehearing submission (Ex. 22-22D) and at the public hearing, the Applicant agreed to each of DDOT's conditions, including all three TDM conditions. The Applicant submitted revised site plans (Sheets 38-40 of the Plans), which show the extent of the public space and street improvements, including the extended sidewalk along the east side of Half Street, SW, between T and S Streets, SW. At the public hearing, DDOT indicated its support for the Applicant's proposed TDM measures and the revised public space and street improvement plans. All of the aforementioned TDM and transportation mitigation measures have been included as conditions of this Order.

### **ANC Report**

61. By report dated May 23, 2016, ANC 6D reported that at its regularly scheduled and properly noticed public meeting on May 9, 2016, with a quorum of Commissioners present, ANC 6D voted 5-0-0 to support the application with the following concerns and suggestions: (i) consider including low income or affordable units in the project; (ii) address the containment of pet excrement by creating dog comfort areas that provide places where animals can run without destroying public green space; (iii) minimize on-site parking to the greatest extent possible; and (iv) work with ANC 6D to establish an appropriate construction management plan.
62. In response to the ANC's suggestions, the Applicant offered to provide the following: (i) 10 units of affordable housing in the building, set aside for 10 years to households earning up to 60% of the area median income; (ii) a 3,200-square-foot dog park on the property to the north of the building; (iii) 312 on-site parking spaces and a substantial TDM program; and (iv) continued work with ANC 6D to establish an appropriate construction management plan as the project moves forward. As noted below, the Commission believes that it would be inappropriate to include these items as conditions to approval, since they go beyond the scope of the Commission's review of this application. Thus, the ANC's requests are not included as conditions of this Order.

### **CONCLUSIONS OF LAW**

1. The application was submitted pursuant to 11 DCMR §§ 1603 and 1610 for review and approval by the Commission, and pursuant to 11 DCMR § 1610.7 for variance and special exception approval. The Commission concludes that the Applicant has met its burden of proof.
2. The Commission provided proper and timely notice of the public hearing on the application by publication in the *DC Register* and by mail to ANC 6D, OP, and owners of property within 200 feet of the Property.

3. The Commission required the Applicant to satisfy all applicable requirements set forth in 11 DCMR §§ 1603 and 1610. Pursuant to 11 DCMR § 1610.7, the Commission also required the Applicant to meet the requirements for variance relief set forth in 11 DCMR §§ 3103, 1603.4, and 2201.1, and special exception approval set forth in 11 DCMR §§ 3104, 411.6, 411.9, 411.18(c)(5), 936.1, and 1601.7. The Commission concludes that the Applicant has met its burden.
4. The proposed development is within the applicable height, bulk, and density standards for the CG/W-2 Zone District and will not tend to affect adversely the use of neighboring property. The overall project is also in harmony with the general intent and purpose of the Zoning Regulations and Map.
5. The Commission concludes that the proposed project will further the objectives of the CG Overlay District as set forth in 11 DCMR § 1600.2 and will promote the desired mix of uses set forth therein. The design of the renovated building meets the purposes of the CG Overlay and meets the specific design requirements of 11 DCMR §§ 1603.
6. No persons or parties appeared at the public hearing in opposition to the application.
7. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (DC. Law 1-21; D.C. Official Code § 1-309 10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The affected ANC in this case is ANC 6D. The Commission carefully considered ANC 6D's recommendation for approval and concurs in its conclusion to support the granting of the application.
8. As to the ANC's requests to incorporate affordable housing into the project, provide an on-site dog park, and establish a construction management plan, the Commission believes that it would be inappropriate to include these as conditions of its approval. The Commission's authority in this case is limited to whether the Applicant has met the design review, variance, and special exception tests required by the Zoning Regulations, and any conditions of approval should be intended to mitigate identified adverse effects related to that review. Because these requests go beyond the scope of the Commission's review of this application, the Commission declines to include them as conditions of this Order.
9. The Commission is required under § 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)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the application persuasive. With respect to OP's preference for the Applicant to increase its sustainability commitment, the Commission notes that the project will qualify for at least LEED Gold certification. This commitment has been made a condition of this Order.

10. Based upon the record before the Commission, including witness testimony, the reports submitted by OP, DDOT, DOEE, and ANC 6D, and the Applicant's submissions, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under 11 DCMR §§ 1603 and 1610.

### **DECISION**

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application consistent with this Order. The term "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under the Order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under the Order; however, that party remains liable for any violation of any condition that occurred while an owner. This approval is subject to the following guidelines, standards, and conditions:

1. Approval of the project shall apply to Lot 15 in Square 666.
2. The project shall be built in accordance with the architectural drawings submitted in the record of Z.C. Case 16-06 dated June 20, 2016 (Ex. 29), as modified by the guidelines, conditions, and standards below.
3. The Applicant shall implement the following TDM measures:
  - a. For the life of the project, the Applicant shall:
    - i. Designate a TDM coordinator who is responsible for organizing and marketing the TDM plan and who will act as a point of contact with DDOT;
    - ii. Distribute move-in transportation welcome packets to each resident upon move-in that includes information such as:
      - a) Promotion of DDOT's goDCgo website;
      - b) Brochures on carsharing, ridesharing, and bikesharing programs;
      - c) Tips on apps and websites to use to navigate public transportation;
      - d) Maps for nearby bicycle trail routes and bike lanes; and
      - e) Maps for Metrorail, Metrobus, and streetcar routes;
    - iii. Provide bicycle parking that exceeds existing regulatory minimums and provide a bicycle maintenance area with a bike pump and set of tools;




- iv. Provide a TransitScreen or similar device displaying real-time transportation schedules; and
    - v. Provide a Capital Bikeshare station, including the full cost of installation and the first year of operations and maintenance; and
  - b. For the first year of the project, the Applicant shall offer a one-year Capital Bikeshare membership to all building residents; and
- 4. The Applicant shall incorporate the following transportation mitigation measures:
  - a. Construct a sidewalk along the east side of Half Street, between T Street and S Street, S.W.;
  - b. Design and construct an approximately 200-foot cycle track to be separated from the street between the Riverwalk and Water Street, along T Street; and
  - c. Design and install appropriate pavement marking and signage for both blocks of Water Street, S.W., to ensure safe operations, with a curb extension and striping at the T Street intersection designed as needed to ensure roadway widths of each block match.
- 5. The project shall be designed to include at least the minimum number of points necessary to achieve LEED-Gold certification.
- 6. The Applicant shall have flexibility with the design of the project in the following areas:
  - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the buildings;
  - b. To vary the final selection of exterior materials within the color ranges provided (maintaining or exceeding the same general level of quality) as proposed, based on availability at the time of construction;
  - c. To make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals;
  - d. To vary the sustainable features of the project, provided the total number of LEED points achievable for the project does not decrease below the LEED-Gold certification.

7. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.1 et seq. (the "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 identification, 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violations will be subject to disciplinary action.

On July 7, 2016, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application and **ADOPTED** this Order at a special public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and adopt). In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*, that is on August 26, 2016.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
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**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**