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December 31, 2020

## **VIA IZIS**

Zoning Commission  
of the District of Columbia  
441 4<sup>th</sup> Street, NW - Suite 210  
Washington, DC 20001

**Re: Applicant's Supplemental Post-Hearing Submission  
Z.C. Case No. 20-14 - Design Review  
5 M Street, SW (Square 649, Lots 43, 44, 45, and 48)**

Dear Members of the Zoning Commission:

On behalf of VNO South Capitol LLC and Three Lots in Square 649 LLC (together, the "Applicant"), we hereby submit the following information and materials in this Supplemental Post-Hearing Submission, in accordance with the Commission's scheduled set forth at the November 12, 2020, public hearing.

### **A. Final Architectural Drawings**

In its Initial Post-Hearing Submission, the Applicant filed updated architectural drawing sheets demonstrating specific project updates based on comments received from the Commission at the public hearing and from Advisory Neighborhood Commission ("ANC") 6D at the public hearing and in subsequent meetings following the hearing. *See* Exhibits 60-60B.

The Applicant continued to meet with the ANC following submission of the Initial Post-Hearing Submission, including presenting the updated project design at the ANC's public meeting on December 14, 2020, and making additional revisions to the project following that meeting. Based on the continued feedback from the ANC, the Applicant herein submits a complete set of updated architectural drawings at Exhibit A (the "Final Plans") that are intended to replace and supersede all prior drawings submitted to the case record. Revisions to the drawings that have been made since the Initial Post-Hearing Submission include the following:

1. Removal of the hopper-style windows and balconies. The hopper windows with adjacent balconies that remained on the upper-most levels of the south tower were replaced with traditional inset windows and balconies to simplify the design and pull the façade farther

back from the street frontages. As described below, this revision allowed the Applicant to pull the building back by six feet at Floors 10 through 11, which creates additional “tiering”, as requested by the ANC. The hopper-style balconies on the lower were replaced with traditional balconies in the Applicant’s Initial Post-Hearing Submission.

2. Repositioning of the balconies on the south tower at Floors 4 through 11 and adding 38 new balconies since the Initial Prehearing Submission on December 7, 2020. These additional balconies maximize the amount of outdoor space in the project and simplify the balcony pattern to reduce the appearance of a busy façade. Specifically, the Applicant replaced the two-balcony groupings with four-balcony groupings to create a more streamlined and rationalized composition. The south tower now includes 75 total balconies (Floors 4 through 11), compared to 42 balconies presented at the November 12, 2020 public hearing, and 37 balconies presented at the ANC’s December 14, 2020 public meeting.
3. Reverting back to a concrete material palette on the south tower to address the ANC’s preference for concrete over brick masonry.
4. Lightening of the steel expression of the “crown” at the top two floors of the north tower to make the building appear less heavy.

As reflected in the Final Plans, the final building design addresses all of the ANC’s comments, complies with all of the zoning standards for the D-5 zone and the M and South Capitol Streets Sub-Area, and continues to fully satisfy the specific standards for design review under Subtitle I, Chapter 7 of the Zoning Regulations.

#### **B. Update on the Applicant’s Work with ANC 6D**

As stated above, and as requested by the Commission at the public hearing, Applicant continued to meet with ANC 6D following the public hearing and has since incorporated significant additional changes to address concerns raised during the hearing and comments raised since the hearing. At its regularly scheduled and duly noticed public meeting on December 14, 2020, the ANC voted to take no action on the application and to authorize the ANC’s negotiating team to continue to work with the Applicant and make a decision to support or oppose the application prior to the ANC’s post-hearing filing deadline of January 8, 2020.

The ANC raised the following issues prior to, during, and following its December 14, 2020 public meeting, to which the Applicant has responded accordingly:

1. ANC Comment: The ANC stated that the use of brick on the south tower does not reflect Southwest design principles and should be returned to concrete.

Applicant’s Response: As shown in the Final Plans, the Applicant replaced the brick masonry with a concrete material palette on the south tower. The Applicant’s Initial Post-Hearing Submission included information on how the Applicant would maintain the light colored-brick so that it would remain clean over time. Similarly, the Applicant will implement a regular cleaning regimen for the light concrete façade. The concrete will have a factory- or plant-applied penetrating sealer and admixtures to discourage the collection

of dirt on the material, and will have drip edges at exposed headers. In addition, all horizontal sills will be detailed in a way to encourage effective water drainage and discourage the collection of dirt over time.

2. ANC Comment: The ANC reiterated its suggestion that the building “have the exterior skin slightly recessed behind the exoskeleton” and continued to express concern that the building still appears heavy.

Applicant’s Response: While the Applicant did not recess the building behind an exoskeleton across the entire façade, it did provide recessed windows at the corners and converted all of the balconies on the south tower to traditional inset balconies, which has the same effect of pulling the windows inward behind an exoskeleton. Applying an exoskeleton for the entire building could have the effect of increasing shadows and making the building feel darker and heavier, which the Applicant wanted to avoid.

3. ANC Comment: The ANC stated that the project does not incorporate tiering, since it still provides a wall on M Street and does not incorporate the concept of a gateway into Southwest.

Applicant’s Response: The Applicant has established significant tiering of the project as it moves from South Capitol Street towards the Southwest neighborhood. While the ANC states that they would like to see the tiering occur in the opposite direction (i.e. lower heights along South Capitol that step up as the building moves west), the Applicant believes that preserving South Capitol Street’s 130-foot tall streetwall and stepping down into the neighborhood is fully consistent with the goals of the Zoning Regulations, the Southwest Neighborhood Plan, and the Comprehensive Plan, and it better respects the lower-density residential neighborhood to the south and west.

The objectives of the M and South Capitol Street Sub-Area specifically call for the preservation of views towards the Capitol and development of a “high density mixed use corridor” along South Capitol street. *See* 11-I DCMR § 616.1. *See also* 11-I DCMR § 616.7(g) requiring minimum streetwall requirements on the west side of South Capitol Street, and the Comprehensive Plan and Southwest Neighborhood Plan which identify the subject property for high density development. Accordingly, the Applicant placed the project’s greatest height and density along the South Capitol Street frontage to establish the required streetwall and frame the corridor.

In response to comments from the ANC, the building tiers down significantly as it moves west, starting at 130 feet at South Capitol, to 110 feet for south tower’s M Street frontage, and down to 80 feet at the top of the pavilion. The ten-foot setback at 110 feet wraps the building from South Capitol Street to M Street, and an additional six-foot setback is now provided at Floors 10 through 11 facing M and South Capitol Streets, which results from the Applicant’s replacement of the hopper-style windows with inset balconies. This additional setback has the effect of lowering the perceived height of the building and creating an inherent cornice similar to the effect of the line of inwardly-rotated hopper-style windows at that level.

Moreover, as described in the Applicant's Initial Post-Hearing Submission, the Applicant set back the west wall of the south tower at Floors 12 through 13 and incorporated setbacks comprised of framed outdoor terraces at Floors 4 through 5 and 8 through 11 along M Street facing the pavilion, thus creating additional tiering along M Street as the building moves west towards the southwest neighborhood. The pavilion also includes inset terraces to provide a further tiered element at the corner of M and Half Streets.

In addition, and as shown on the setback/tiering diagrams at Sheets 30, 37, 38, 43, 44, and 45 of the Final Plans, the Applicant carved away at the massing along both M and South Capitol Street continuously in its work with the ANC, specifically eroding the building's southeast corner by removing interior space and holding the architecture together with only the framing of structural columns. At this corner, the Applicant created large outdoor terraces, added new inset balconies, and established an open re-entrant corner at the ground level. These are in addition to the 1:1 setback at 110 feet, the additional six-foot setbacks at Floors 10 through 11, and the three-foot setback along the south tower's M Street frontage at the ground floor. Creating these cut-outs allows for the project to continue to respect the streetwall along both South Capitol and M Streets while creating a light and airy open expression at the corner and highlighting the gateway entrance into the Southwest neighborhood as requested by the ANC.

Overall, the Applicant has balanced the ANC's request for additional tiering with the stated urban design goals for this high density site. Any further tiering of the M Street façade will have ripple effects in the building, which would adversely impact the unit layouts as well as the penthouse location and the amenities at the roof level, all of which the project cannot support. The tiering as proposed emphasizes the importance of this site as a gateway into Southwest, recognizes the mix of heights and densities in Southwest, and meets the urban design goals for this high density site as set forth in the Zoning Regulations, the Comprehensive Plan, and the Southwest Neighborhood Plan.

4. ANC Comment: The ANC stated a preference for the revised open balconies instead of the hopper windows on the south tower and wanted to see more balconies along both M and South Capitol Streets.

Applicant's Response: As stated above, the Applicant replaced the hopper-style window component of the balconies with more traditional inset balconies and replaced the two-balcony groupings with four-balcony groupings to create a more streamlined and rationalized façade composition. The Applicant has completely removed the hopper-style window and balcony components from the project in response to feedback from the ANC.

The Applicant also clarified for the ANC that it increased the total number of balconies on the south tower from 42 at the November 12, 2020, public hearing to 75 as shown in the Final Plans. For the overall project (north and south towers combined), the Applicant increased the number of balconies from 89 individual balconies plus 488 linear feet of connected balconies at the November 12, 2020 public hearing to 94 individual balconies plus 641 linear feet of connected balconies at the ANC's December 14, 2020 public meeting to 132 individual balconies plus 641 linear feet of connected balconies as shown in the Final Plans.

5. ANC Comment: The ANC asked whether units without balconies would have operable windows.

Applicant's Response: All units without balconies will have code-compliant and operable awning-style windows that pivot outward. The Applicant presented examples of the awning windows to the ANC and explained that they are used frequently throughout the District.

6. ANC Comment: The ANC requested clarification on the retail space, especially on M Street, and stated a concern that the retailer in the pavilion “could have extensive illumination that would shine into the windows of the sanitary homes across the street.”

Applicant's Response: The Applicant has already committed to a restriction in the final zoning order that prevents the Applicant from installing any neon lighting or digital signage on the exterior of the project. The Applicant has also committed to a lighting plan that shows the types and locations of proposed lighting and specifically includes only low path lighting for egress, recessed downlights and wall sconces, and overhead downlights, and specifically restricts any architectural lighting. *See* Applicant's Supplemental Prehearing Submission (Ex. 52) and Lighting Plan (Ex. 32A).

Moreover, the sanitary row homes are located more than 100 feet across M Street from the project and do not have any windows that face north towards the project. *See* images below showing the north-facing facades of the closest sanitary homes facing the project along M Street, which do not have any windows. Accordingly, the Applicant does not believe that the M Street retail will have any negative effects on the sanitary row homes to the south.



7. ANC Comment: The ANC stated that they do not have a clear understanding of the courtyard and back side of the building. They also requested that a “public” green space be incorporated in/around the Heritage Tree.

Applicant's Response: As shown in the Final Plans, the courtyard is multi-level and includes a variety of active and passive outdoor spaces for building residents to enjoy. The

courtyard will not be open to the public and will be surrounded on all sides by the project such that it will not be visible from any public space surrounding the property.

Regarding the Heritage Tree, the Applicant previously confirmed that the tree is already entirely within public space adjacent to the property on Half Street, and that plans for the tree, including the final public space design, landscaping, and improvements, are subject to review and approval by DDOT.

8. ANC Comment: The ANC stated their continued concern with the alley and curb cut on L Street where the project abuts Lot 47 owned by the party in opposition to the application (the “Party Opponent”). The ANC stated that they wanted the building to be pulled back from Lot 47 so that it did not bridge over the north-south private driveway. The ANC requested information on how construction phasing would work, and how the Applicant’s development would impact Lot 47 development, particularly as it relates to DDOT’s preference to have only one curb cut on L Street. The ANC requested that the Applicant demonstrate how the interaction between the project and future development on Lot 47 would be compatible to ensure that each building is respectful to tenants, residents, and retailers.

Applicant’s Response: The Applicant has worked with the Party Opponent since the public hearing to establish specific internal loading dock and column locations to ensure head-in and head-out loading and effective sharing of the north-south private driveway for both properties, regardless of construction sequencing. There is no change to the configuration of the L Street façade since presented at the hearing. Details on the Applicant’s agreement with the Party Opponent are set forth in Section C of this statement.

9. ANC Comment: The ANC requested that the Applicant include a condition in the final zoning order that it would work with ANC 6D to identify the retailer(s), coordinate with ANC 6D regarding retail signage, and work together on a CTR based on the selected retailer(s). The ANC also stated that the final order should restrict trucks from delivering goods to any of the retailers from South Capitol or M Streets, and that the loading dock can accommodate a 55-foot truck.

Applicant’s Response on Retail Coordination: The Applicant will evaluate market conditions for the retail component of the Project closer to the time of Project delivery. To the extent that the ANC requests updates on the Applicant’s marketing and leasing efforts, the Applicant will provide updates following the design review process.

Applicant’s Response on Retail Signage: The Applicant has provided a detailed signage plan showing the location and extent of the proposed signage, which includes storefront elevations, precedent signage images, and building renderings (*see* Sheets 120 through 127 and rendering on Sheet 62 of the Final Plans). The Applicant has also committed to including a condition in the final zoning order that prohibits digital signage or signage that uses neon lighting on the exterior of the Project. The proposed condition is as follows:

*For the life of the Project, the Applicant shall install building signage that is consistent with the signage shown on the Approved Plans and shall prohibit digital signage or signage using neon lighting on the exterior of the Project.*

Applicant's Response on CTR for Selected Retailer: The Applicant's CTR submitted in this case and reviewed by DDOT took a conservative approach with respect to the final retail tenant by assuming that a small format grocer would be one of the tenants, which is the most intense possible retail tenant. *See Exhibit 12A.* In doing so, the CTR found that the project would not have a detrimental impact on the transportation network and included a traffic impact analysis that was fully vetted by DDOT. *See DDOT Report at Exhibit 15, p. 5,* stating that the Applicant and DDOT coordinated on an agreed-upon scope for the CTR that is consistent with the scale of the action. Accordingly, a separate evaluation is not needed following the final selection of the retail tenant. Moreover, the Applicant has agreed to report to DDOT within one year of the certificate of occupancy that it is in compliance with the TDM measures that DDOT has requested and has agreed to report back periodically thereafter. These requirements will be conditions to any order approving the project.

Applicant's Response on Deliveries to Retailers from South Capitol and M Streets, SW: The Project has been designed to provide head-in/head-out on-site loading within the private driveway to fully internalize all loading activities. The Applicant will agree to include the following condition in the final zoning order to address the ANC's concern regarding loading:

*For the life of the Project, the Applicant shall include language in all commercial leases that requires retailers to use the on-site loading facilities within the Property for all pick-up and drop-off loading activities.*

Applicant's Response on Size of Loading Dock: The on-site loading facilities and private driveway have been designed to accommodate WB-67 trucks (the largest size truck permitted in the District) with head-in and head-out maneuvers, which is consistent with DDOT standards.

**C. Update on the Applicant's Agreement with the Party Opponent**

The Applicant has worked closely with the Party Opponent since the public hearing to come to an agreement on the layout and operation of the private driveway that will be used to access the Property and future development on Lot 47. Specifically, as shown on Exhibit B, the Applicant and the Party Opponent have (i) identified column spacing within the private driveway that will allow for adequate access to the Lot 47 parking and loading facilities and service areas; (ii) shifted the phasing line for the project so that if development of Lot 47 occurs between Phases A and B of the project, then during construction of Phase B access to Lot 47 can be provided from Half Street; and (iii) confirmed that a temporary portion of the north-south private driveway will be constructed during Phase A, such that the private driveway can be accessed from L Street until construction of Phase B at which point the temporary condition will be closed and the final condition will be constructed and re-opened upon completion of Phase B. The agreement between

the two parties does not result in any modifications to the exterior of the building and is designed to eliminate any potential impacts to Lot 47 if development of Phase B occurs after development of Lot 47.

In order to effectuate the final agreement between the Applicant and the Party Opponent, the Applicant requests design flexibility to revise the final dimensions and column spacing within the private driveway to accommodate vehicular access to Lot 47 as the design of that project moves forward and to revise the loading facilities during development of Phase B of the project so long as the project as a whole continues to comply with the minimum loading requirements of the Zoning Regulations. Proposed flexibility language regarding the private drive design and loading facilities is included in Section E of this statement.

In addition, as requested by the Office of Planning in its Supplemental Report dated November 10, 2020, and as agreed to between the Applicant and the Party Opponent, the Applicant proposes the following condition as part of the order:

**Prior to the issuance of a Building Permit for the Project**, the Applicant shall demonstrate to the Zoning Administrator that (i) it has recorded an easement agreement permitting the owner of Lot 47 to share in the use of the private driveway for purposes of ingress and egress to parking, loading and service areas associated with future improvements on Lot 47, and (ii) a copy of the recorded easement agreement has been provided to DDOT Planning & Sustainability Division.

Finally, to accommodate the agreement between the Applicant and the Party Opponent, the Applicant proposes the additional requirements to become part of the phasing condition in an order approving the project:

As part of the construction of Phase A, the Applicant shall construct the two proposed curb cuts as approved by DDOT, one on Half Street and one on L Street along with an at-grade private driveway as shown on the Approved Plans. The Applicant shall obtain the required public space approval for the curb cuts **prior to the issuance of a building permit for Phase A of the Project**. The north-south segment of the private drive shall have a vertical clearance of no less than 18 feet and it shall have a clear width along the property line at Lot 47 of no less than 22 feet, as shown on the Approved Plans. The east-west section of the private drive shall have a vertical clearance of no less than 18 feet and it shall have a clear width of no less than 20 feet, as shown on the Approved Plans.

Based on these agreements, it is the Applicant's understanding that the Party Opponent will remove its opposition to the project.

**D. Response to Opponents' Comments on Affordable Housing, Gentrification and Displacement**

Several residents of the Southwest neighborhood submitted letters and information in opposition to the Application (Ex. 15, 18, 20-26, 28-31, 33-34, 37-39, and 41-48) and three

individuals testified in opposition to the project at the public hearing (individuals providing written and/or oral testimony referred to as the “Opposition”).

The overarching concern stated by the Opposition was that the Southwest neighborhood needs more affordable housing units at deeper levels of affordability and at a range of unit sizes that will support a diverse population including families, but that the housing and affordable housing in the project does not satisfy those needs. The Opposition stated that longtime residents and particularly residents of color were being forced out of the neighborhood as a result of recent development trends that swayed heavily towards smaller “luxury housing” units and drove up rent prices and that the project would exacerbate those trends. *See, e.g.* Ex. 21, 22. Many of the Opponents specifically stated that the project should be comprised of 1/3 “deeply affordable” units, 1/3 “workforce housing” units, and 1/3 market rate units. *See, e.g.* Ex. 33, 34. In raising concerns with affordability and “gentrification” generally (*see, e.g.* Ex. 29, 30), the Opposition alleged that the Project was inconsistent with the SW Plan, including its goal to “remain an exemplary model of equity and inclusion,” and also inconsistent with the Mayor’s goal of providing 12,000 affordable units across the District.

Attached hereto as Exhibit C is a summary of the Applicant’s response to the Opponent’s allegations regarding affordable housing and gentrification, which concludes that the Applicant is providing affordable housing beyond the minimum required by the Commission-adopted IZ regulations and that the project will in fact help to mitigate the negative effects of gentrification and housing costs throughout the District.

#### **E. Design Flexibility**

As a result of the Applicant’s significant revisions to the project design as a result of continued engagement with the ANC and feedback from the Zoning Commission at the public hearing, the Applicant proposes the following revised design flexibility:

- a. Uses in the Pavilion: To provide retail and/or residential amenity uses in the flexible space located on the first level of the pavilion at the corner of M and Half Streets comprising approximately 6,673 square feet;
- b. Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the plans approved by the order;
- c. Exterior Materials: Color: To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the order;
- d. Exterior Details: Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the plans approved by the order. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;

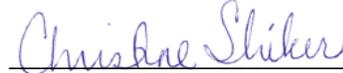
- e. To locate retail entrances in accordance with the needs of retail tenants and to vary the facades as necessary;
- f. To vary the types of uses designated as retail use to include the following use categories (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)); (v) Medical Care (11-B DCMR § 200.2(p)); and (vi) Arts, Design, and Creation (11-B DCMR § 200.2(e));
- g. Exterior Courtyards and Rooftop: To vary the configuration and layout of the exterior courtyards and rooftops, including the location and size of the rooftop pool, so long as the courtyards and rooftops continue to function in the manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained;
- h. Number of Units: To provide a range in the approved number of residential dwelling units of plus or minus ten percent (10%), provided that to the extent that additional three-bedroom units are incorporated, to reduce the number of units by up to fifteen percent (15%);
- i. Parking Layout: To make refinements to the approved parking configuration, including layout and number of parking spaces of plus or minus ten percent (10%), so long as the number of parking spaces is at least the minimum number of spaces required by the Zoning Regulations;
- j. Internal Circulation and Loading: To make refinements to the private drive internal to the Project, including but not limited to the final dimensions and column spacing, so long as the clear dimension within the private driveway is not less than 22 feet along the shared property line at Lot 47 and 20 feet within the private driveway, to accommodate vehicular access to Lot 47 as the design of that project proceeds, and to modify the loading facilities on the Property so long as they (i) comply with the minimum loading requirements of Subtitle C, Chapter 9, (ii) continue to accommodate head-in and head-out maneuvers, and (iii) accommodate access to the future Lot 47 project as contemplated under the final agreement between the Applicant and the Party Opponent;
- k. Streetscape Design: To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
- l. Signage: To vary the font, message, logo, and color of the approved signage, provided that (i) digital and neon signage shall not be permitted on the exterior of the project; (ii) the maximum overall dimensions and signage materials are consistent with the signage on the plans approved by the order; and (iii) the signage is compliant with the DC signage regulations; and

- m. Sustainable Features: To vary the approved sustainable features of the project, including the location of solar panels, provided the total number of LEED points achievable for the project does not decrease below the minimum required for the LEED standard specified by the order.

The Applicant appreciates the Commission's continued review of this application.

Sincerely,

HOLLAND & KNIGHT, LLP



Christine M. Shiker.



Jessica R. Bloomfield

#### Attachments

- cc: Certificate of Service  
Joel Lawson, Office of Planning (via email, with attachments)  
Steve Cochran, Office of Planning (via email, with attachments)  
Anna Chamberlin, District Department of Transportation (via email, with attachments)  
Aaron Zimmerman, District Department of Transportation (via email, with attachments)  
Gail Fast, ANC 6D Chair (via email at 6d01@anc.dc.gov, with attachments)  
Andy Litsky, ANC 6D04 (via email at 6D04@anc.dc.gov, with attachments)  
Fredrica Kramer, ANC 6D05 (via email at 6d05@anc.dc.gov, with attachments)  
Anna Forgie, Committee on 6D02 Affairs (via email at forgie6d02@gmail.com, with attachments)

**CERTIFICATE OF SERVICE**

I hereby certify that on December 31, 2020, a copy of the foregoing Final Post-Hearing Submission was served on the following by email:

Ms. Jennifer Steingasser  
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Via Email

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