

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 20-14

Z.C. Case No. 20-14

VNO South Capitol, LLC and Three Lots in Square 649, LLC  
(Design Review @ 5 M Street, S.W. (Lots 43-45 & 48 in Square 649))

October 1, 2020

Pursuant to notice, at its October 1, 2020 virtual public hearing, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of VNO South Capitol, LLC and Three Lots in Square 649, LLC (the “Applicant”) requesting Design Review approval pursuant to Subtitle I §§ 616 and 701 under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), Zoning Regulations of 2016, to which all references are made unless otherwise specified) for Lots 43, 44, 45, and 48 in Square 649, with an address of 5 M Street, S.W., (the “Property”) in the D-5 Zone District and the M and South Capitol Streets Sub-Area, to authorize a new mixed-use project with residential, office, and ground floor retail uses (the “Project”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z, Chapter 4. For the reasons below, the Commission hereby **APPROVES** the application.

**FINDINGS OF FACT**

**I. BACKGROUND**

**PARTIES**

1. The following were automatically parties in this proceeding pursuant to Subtitle Z § 403.5:
  - The Applicant; and
  - Advisory Neighborhood Commission (“ANC”) 6D, the ANC within which the Property is located and so an “affected ANC” pursuant to Subtitle Z § 101.8.
2. The Commission granted the request of 1101 South Capitol, LLC (“Lot 47 Owner”), the owner of Lot 47, the only lot in Square 649 other than the Property, which abuts Lot 47 on its east and north lot lines (at Lot 45 and 48 respectively), for party status (Exhibit [“Ex.”] 53A) to protect the Lot 47 Owner’s ability to use and redevelop Lot 47, specifically loading and parking access.<sup>1</sup>

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<sup>1</sup> The Commission granted this party status application notwithstanding that it was filed well after the deadline for doing so pursuant to its authority under Subtitle Z § 101.9, which provides that “[t]he Commission may, for good cause shown, waive any of the provisions of this subtitle if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.” In this case, the Commission finds there is good cause because the new design of support columns along the proposed private drive could adversely affect the Lot 47 Owner’s use and enjoyment of its property, the reasons for the Lot 47 Owner’s application did not arise until the Applicant redesigned the building after the original hearing. The Commission finds that granting party status to the Lot 47 Owner would not prejudice the rights of the Applicant because it was filed well in advance of the second hearing when the Applicant will have an opportunity to respond to the issues raised by the Lot 47 Owner.

### **NOTICE**

3. Pursuant to Subtitle Z § 301.6, on April 8, 2020, the Applicant mailed a Notice of Intent to file a Design Review application to all property owners within 200 feet of the Property and to ANC 6D (Ex. 3F).
4. By letter dated July 7, 2020 (Ex. 5, 6), the Office of Zoning (“OZ”) sent notice of the January 9, 2020 public hearing to:
  - The Applicant;
  - ANC 6D;
  - ANC SMD 6D02, whose district includes the Property;
  - Office of ANCs;
  - The Office of Planning (“OP”);
  - The District Department of Transportation (“DDOT”);
  - The District of Columbia Housing Authority (“DCHA”);
  - The Office of the Attorney General;
  - The Department of Energy and the Environment (“DOEE”);
  - The Ward 6 Councilmember, whose ward includes the Property;
  - The Chair and At-Large Members of the District of Columbia Council; and
  - Owners of property within 200 feet of the Property.
5. Pursuant to Subtitle Z § 402, OZ published the Notice of Public Hearing in the July 7, 2020 *D.C. Register* (67 DCR 8803) and on the calendar on the OZ website (Ex. 4).

### **THE PROPERTY**

6. The Property contains approximately 75,656 square feet of land area and comprises approximately 75% of Square 649 (Ex. 3).
7. The Property is currently improved with a single-story retail structure on Lot 48 and is otherwise used as surface parking (Ex. 3).
8. The Property is bounded by:
  - To the north – by L Street, S.W., and by Lot 47 (north of Lot 48);
  - To the east – by South Capitol Street and by Lot 47 (east of Lot 45);
  - To the south – by M Street, S.W.; and
  - To the west – by Half Street, S.W.
9. The Property is located between the Navy Yard and Southwest Waterfront neighborhoods of the District:
  - Approximately three blocks south of the Southeast Freeway;
  - Approximately three blocks west of the Navy Yard Metrorail station;
  - Four blocks east of the Waterfront Station Metrorail Station; and
  - One block north of Nationals Park (Ex. 3).

10. The neighborhood surrounding the Property is improved primarily with a variety of high-density mixed-use residential towers, office buildings, and hotels except for the lower-density, two-story residential uses to the south and southwest of the Property, south of M Street, S.W. (Ex. 3).

### ZONING

11. The Property is located in the D-5 zone and the M and South Capitol Streets Sub-Area, which have the following purposes:
  - **D-5 zone** - To promote high-density development of commercial and mixed-uses (Subtitle I § 538.1); and
  - **M and South Capitol Streets Sub-Area** - To ensure the preservation of this historically important axial view of the Capitol Dome and further the development of a high-density mixed-use corridor north of the Capitol Gateway neighborhood (Subtitle I § 616.1).
12. Subtitle I § 539.2 exempts the Property from the requirements or bonuses of the Inclusionary Zoning (“IZ”) requirements of Subtitle C, Chapter 10, except that penthouse habitable space generates an IZ requirement pursuant to Subtitle C, Chapter 10, and §§ 1500.11-1500.12
13. The area surrounding the Property is zoned as follows:
  - To the north, including Lot 47 and Square 648 – the D-5 zone;
  - To the south and southeast – the CG-2 zone, with the lots fronting on South Capitol Street permitted to be developed with buildings having a height of 110 feet;
  - To the south and southwest – the RF-1 zone; and
  - To the west – the MU-7 zone.

## II. THE APPLICATION

### THE PROJECT

14. The Application proposed to develop the Property as a mixed-use project<sup>2</sup> with residential use and ground floor retail to be developed in two phases pursuant to Subtitle Z § 702.4:
  - **“Phase A” on the southern portion of the Property** - A residential tower with ground floor retail at the corner of M Street, S.W., and South Capitol Street (the “South Tower”) and the “Pavilion” located on the southwest corner of the Property that includes residential units and the “meaningful connection”<sup>3</sup> between the two Phases; and
  - **“Phase B” on the northern portion of the Property** - A residential tower with walk-up residential units on the ground floor along Half Street and the primary residential pedestrian entrance on L Street, S.W. (the “North Tower”) (Ex. 14, 61A, 65A).
15. The Application proposed to construct the Project with:
  - A maximum building height of 130 feet;
  - Penthouse habitable and mechanical space at a maximum height of 20 feet;

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<sup>2</sup> The Applicant initially requested relief to permit it to develop the Project with two alternative designs, one of which included a significant office component, but subsequently withdrew the alternative that included the office component in a supplementary pre-hearing statement (Ex. 52).

<sup>3</sup> The two towers will be considered one building for zoning purposes.

- Approximately 682,351 square feet of gross floor area (“GFA”), with:
    - Approximately 659,325 square feet devoted to residential use for approximately 615 residential units including some in penthouse habitable space; and
    - Approximately 23,026 square feet devoted to retail use; and
  - A floor area ratio (“FAR”) of approximately 9.0.
16. The Project includes a centralized, two-way private driveway system to provide access to below-grade parking, internal loading, and internal passenger drop off areas. The below-grade parking garage will be accessed from the private drive and will include approximately 311 vehicle parking spaces. The loading facilities include four 30-foot loading berths and two 20-foot service/delivery spaces, which exceed the zoning requirements and will accommodate front-in, front-out truck access.
  17. In order to minimize potential vehicular and pedestrian conflicts, two-way traffic for pedestrian pick-up and drop-off will be provided internal to the Property within the east-west portion of the private drive. The primary pedestrian entrances will be located on M and L Streets, S.W., with retail entries on M Street, S.W., and South Capitol Street. Additional secondary entry points will be located on Half and L Streets, S.W., including direct walk-ups to residential units on Half and L Streets, S.W. (Ex. 14, 61A).
  18. The Project will meet or exceed the required long- and short-term bike parking requirements. The bicycle storage rooms are located in the first garage level only. Short term exterior bike parking will be located on all street frontages (Ex. 14, 61A).
  19. The streetscape surrounding the Property will include DDOT-standard scored concrete with special paving at the lobby entrances. Permeable paving will be used wherever possible, interspersed with understory plantings and canopy trees, in order to reduce storm water runoff. A variety of pedestrian-scaled streetscape features will be installed, including new lighting, benches, bicycle racks, and trash and recycling receptacles. An existing bus stop will be relocated from mid-block on M Street, S.W., to the corner of M and Half Streets, S.W. To enlarge the public space along M Street, S.W., the Applicant will set back the ground level façade by three feet in order to provide additional pedestrian space along the important corridor. This revision provides greater opportunity for outdoor activation as well as the ability to incorporate additional plantings and greenery in the tree zone (Ex. 14, 61A).
  20. The Project will include several sustainable features including:
    - Extensive and intensive green roof areas located in the courtyard, on the roof, and on the penthouse roof. The green roofs will be at least eight inches deep to offer higher stormwater retention and opportunities to create a diverse planting palette. Native and adaptive species will be maximized to foster biodiversity and create a microhabitat;
    - Roof pavers with high solar reflectivity, in addition to green roof cover, will be used to considerably reduce the heat island effect;
    - Small and medium trees and large shrubs will be planted in the courtyard and on the roof where possible;

- A minimum of 1,000 square feet of solar panels located on the south facing penthouse walls;
  - Additional sustainable elements will also be incorporated, including a water source heat pump, high performance windows, central ventilation with energy recovery and pressurization systems, and electric vehicle charging in the garage; and
  - The Project has been designed to achieve LEED Silver under LEED v4 for Building Design and Construction (Ex. 14, 61A).
21. The Project’s proposed penthouse habitable space will generate an IZ requirement for one IZ unit to be provided in Phase A of the Project and set aside for households earning up to 50% of the Median Family Income (“MFI”) (Ex. 61C). In addition to this required IZ unit, the Applicant has committed to providing 19 nonrequired affordable units (“Non-IZ Affordable Units”) at 60% of the MFI for the life of the Project and subject to the following additional development standards that are required for IZ affordable units:
- The proportion of studio and one-bedroom Non-IZ Affordable Units will not exceed the proportion of studio and one-bedroom market rate units;
  - The Non-IZ Affordable Units will have comparable exterior design, materials and finishes to the market rate units;
  - The Non-IZ Affordable Units will have comparable interior amenities such as finishes and appliances as the market rate units;
  - The Non-IZ Affordable Units will not be overly concentrated on any floor of the Project;
  - The Non-IZ Affordable Units will not be located in cellar space (Ex. 61C); and
  - At least one Non-IZ Affordable Unit will be a three-bedroom unit (Ex. 68A).
22. The Applicant agreed to memorialize this commitment outside of the design review process by executing and recording a Declaration of Covenant for Non-Inclusionary Zoning Affordable Units (“Declaration”) in the District of Columbia Land Records prior to issuance of the final Order approving the application. This Declaration sets forth the specific terms of the Applicant’s commitment for the Non-IZ Affordable Units listed above and ensures that the commitment runs with the land for the life of the project.

**RELIEF REQUESTED**

23. The Application requested:
- Design Review approval as required by Subtitle I §§ 616.6 and 616.8, and pursuant to the criteria of Subtitle I, Chapter 7, for an addition to a building with “frontage on a designated street segment within the M and South Capitol Streets Sub-Area;” and
  - No other zoning relief.

**APPLICANT’S SUBMISSIONS**

**CTR**

24. The Applicant submitted a Comprehensive Transportation Review report dated August 17, 2020 (Ex. 12-12A2, the “CTR”), that concluded that the Project would not have a detrimental impact on the surrounding transportation network assuming the proposed site design elements, mitigation measures, and Transportation Demand Management (“TDM”) measures are implemented, based on the following conclusions:

- The Project would result in delays at three intersections and therefore would require mitigation in the form of signal timing and phasing adjustments at M and Half Streets, S.W., for the morning peak hour; and South Capitol and I Street, S.W./S.E., for the afternoon peak hour;
- Although the Property is exempt from the parking requirements, the Project includes a total of 299 on-site parking spaces in a below-grade garage;
- The Project’s loading facilities satisfy the zoning requirements and will accommodate all loading activity and delivery demand for the residential and retail uses without any detrimental impact to the surrounding transportation network;
- The Project is expected to generate a manageable amount of transit trips, and the existing service can accommodate these new trips because the Property is well-served by transit, including:
  - Two Metrorail stations within a half-mile;
  - Local and regional bus routes; and
  - Several planned or proposed transit projects will improve transit access to the Property, including a peak-hour bus and bike lane on M Street, S.W.;
- The Project is expected to generate pedestrian trips that can be accommodated by the existing pedestrian facilities and the Project’s improvement of the sidewalks along the perimeter of the Property that will enhance the overall pedestrian environment; and
- The Project is expected to generate bicycle trips that can be accommodated by the existing bicycle facilities and the Project’s long-term bicycle parking within the building and short-term bicycle parking along the perimeter of the Property that meet zoning requirements.

**Prehearing Submission**

25. The Applicant submitted a September 11, 2020 filing (Ex. 13-14E, the “Prehearing Statement”), that included the following information and materials:
- Updated architectural drawings and descriptions identifying how the Applicant had revised the building design based on continued feedback from the ANC and OP;
  - A commitment to provide a minimum of 750 square feet of solar panels on the south facing penthouse walls, and a solar panel study showing the approximate locations;
  - Updated calculations for the IZ requirement generated by the penthouse habitable space;
  - An explanation that Subtitle X § 601.1 exempts the Project from demonstrating compliance with the standards for Design Review cases generally, which are set forth in Subtitle X, Chapter 6, and a corresponding explanation at Exhibit 14C of how the Application complies with the standards of Subtitle X, Chapter 6 even though they are not applicable. This explanation included analyses of the Project’s compliance with the Comprehensive Plan (the “CP”) and the Southwest Neighborhood Small Area Plan (“SW Plan”) at Exhibit 14D; and
  - An update on the Applicant’s continued engagement with the ANC and the Applicant’s specific responses and modifications to the Project based on the ANC’s additional feedback.

### **Supplemental Prehearing Submission**

26. The Applicant submitted a November 3, 2020 filing (Ex. 52-52D; the “Supplemental Prehearing Submission”), that included the following information and Project updates for the November 12, 2020 public hearing:
- Removal of the Applicant’s request for flexibility to develop the Property with the mixed-use scheme, based on comments from the Commission and ANC and a corresponding set of revised plans;
  - A summary of the Applicant’s continued engagement with the ANC, including updates to the building design, responses to questions raised by ANC commissioners in meetings following the October 1, 2020 public hearing;
  - A commitment to provide 19 Non-IZ Affordable Units in the Project in addition to the one required IZ unit; and
  - A supplemental transportation memorandum demonstrating how the revised development program impacts the transportation aspects of the Project. The supplemental transportation memorandum also included an updated TDM plan.

### **Initial Post-Hearing Submission**

27. The Applicant’s Initial Post-Hearing Submission (Ex. 60-60B) included the following additional information requested by the Commission at the November 12, 2020 public hearing:
- Revised architectural drawing sheets demonstrating updates to the Project based on comments from the Commission and the ANC;
  - An update to the Applicant’s affordable housing commitment to provide:
    - One required IZ unit at 50% of the MFI; and
    - 19 Non-IZ Affordable Units at 60% of the MFI that would also comply with many of the development standards required for IZ units;
  - A summary of the Applicant’s overall commitment to affordable housing, and an analysis of the Project’s compliance with the applicable standards of review under the Zoning Regulations, and the Comprehensive Plan;
  - A plan showing the revised location for the one required IZ unit and a commitment to include a minimum of 1,000 square feet of solar panels as requested by OP; and
  - An update on the Applicant’s continued engagement with the ANC.

### **Final Post-Hearing Submission**

28. The Final Post-Hearing Submission (Ex. 61) included the following additional information and materials requested by the Commission at the November 12, 2020 public hearing:
- A complete set of updated architectural plans and elevations that incorporated all of the feedback from the ANC following the public hearing (the “Approved Plans”);
  - A description of the Applicant’s continued work with the ANC and responses to the ANC’s final comments and concerns;
  - An update on the Applicant’s Agreement with the Lot 47 Owner;
  - A response to comments raised by individuals at the public hearing and in written testimony regarding the Project’s impact on affordable housing, gentrification, and displacement in the Southwest neighborhood concluding that these impacts were the result of larger market forces and not individual projects (Ex. 61C); and

- An updated request for design flexibility.

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

**M and South Capitol Streets Sub-Area Criteria (Subtitle I § 616.7)**

29. The Application asserted that it complies with Subtitle I § 616.7(a) and (d)'s setback requirements because:
- The street wall on the eastern and western sides of South Capitol Street shall be set back for its entire height and frontage not less than fifteen feet (15 ft.), from the property line adjacent to South Capitol Street; and
  - The portion of the building that exceeds one hundred ten feet (110 ft.) in height provides the additional one-to-one (1:1) setback from the building line along South Capitol Street.
30. The Application asserted that it complies with Subtitle I § 616.7(e)'s requirements for vehicular entrances because there are no openings in building frontages along South Capitol Street that provide entrances or exits for vehicular parking or loading.
31. The Application asserted that it complies with Subtitle I § 616.7(g)'s street wall requirements because a minimum of 60% of the street-wall on the west side of South Capitol Street shall be constructed on the setback line (the plans showed that approximately 66% of the street wall will be constructed on the setback line).

**M and South Capitol Streets Sub-Area Design Review Criteria (Subtitle I § 701.2)**

32. The Application asserted that it complies with the criteria of Subtitle I § 701.2(a) because the Project achieves the objectives of the Sub-Area, is in context with the surrounding neighborhood and street patterns, minimizes conflicts between vehicles and pedestrians, minimizes unarticulated blank walls, and minimizes its impact on the environment. The Project draws from influences in the Southwest neighborhood, reflects the monumental importance of the South Capitol Street boulevard, establishes a vibrant ground floor pedestrian experience, and serves as an important gateway into the Southwest neighborhood at its prominent location.
33. The Application asserted that it complies with the criteria of Subtitle I § 701.2(a)(2) that the Project be in context with the surrounding neighborhood and street patterns because:
- The Project will maximize active street frontage along South Capitol Street through the building's design and improvements to the streetscape;
  - The Project's massing will respond to the change in density from the high-density South Capitol Street corridor to the lower density residential neighborhoods to the south and southwest; and
  - The Project's design will also incorporate architectural elements common to the wider Southwest neighborhood.
34. The Application asserted that it complies with the criteria of Subtitle I § 701.2(a)(3) that the Project minimize conflict between vehicles and pedestrians because parking and loading facilities will all be provided internally to the Project and access to these facilities



will be provided along L and Half Streets, S.W., as opposed to M and South Capitol Streets where the main pedestrian and retail entrances will be located.

35. The Application asserted that it complies with the criteria of Subtitle I § 701.2(a)(4) that the Project minimize unarticulated blank walls adjacent to public spaces because the Project utilizes a number of design elements to increase visual interest and provide façade articulation including large ground floor windows, upper floor setbacks, outdoor courts and terraces, and a variety of high-quality materials.
36. The Application asserted that it complies with the criteria of Subtitle I § 701.2(a)(5) that the Project minimize impact on the environment because the Project:
  - Includes a number of sustainable features including extensive, and intensive, green roofs, 1,000 square feet of solar panels, high performance building systems, and electric vehicle charging stations; and
  - Has been designed to achieve LEED Silver under LEED v4 for Building Design and Construction.

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

37. The Application asserted that it satisfied the special exception criteria of Subtitle X § 901.2(a) and (b), as required by Subtitle I § 701.2(a), because:
  - The Project will be in harmony with the purpose and intent of the Zoning Regulations and Maps because the Project will comply with all of the dimensional and use requirements of D-5 zone, as well as the specific design requirements for a development in the M and South Capitol Streets sub-area as discussed above; and
  - The Project will not result in any adverse impacts to the neighboring property because the Project's height and density is consistent with the surrounding development, and appropriate for the Project's location along a monumental boulevard. The Project has also been designed to minimize conflict between vehicular and pedestrian traffic, to include numerous sustainable features, and a number of improvements to the streetscape which will enhance the pedestrian experience in the area.

### **III. RESPONSES TO THE APPLICATION**

#### **OP**

38. OP submitted a September 21, 2020 report (Ex. 17, the "Original OP Report"), that analyzed the Project against the design review criteria and:
  - Concluded that:
    - The Project would meet all use and dimensional requirements of the Zoning Regulations as well as the Design Review standards of Subtitle I § 616 and Chapter 7 and of Subtitle X, Chapter 9 (Ex. 17, p. 5, 1); and
    - A "design review application in a downtown zone sub-area is not required to undergo as extensive a review as what is required, for example, for a PUD or for a project in Capital Gateway zones. It is specifically exempted from the design review process in Subtitle X, Chapter 6 by [Subtitle] X §601.1. It does not, for instance, require a review of the project's relationship to the Comprehensive Plan, as the development under either alternative would have to be consistent with current zoning. The design review

regulations that must be considered are contained within Subtitle I and are noted in the second paragraph on page 1 of this report.” (Ex. 17, p. 4.); and

- Recommended approval contingent on the following two conditions, to which the Applicant agreed:
  - **Easement** - The Applicant shall provide an easement to the owner of Lot 47 to allow Lot 47 to use the 22-foot wide north-south portion of the Applicant’s private driveway to access parking and loading for Lot 47, provided any driveway width greater than 22 feet that is needed to accommodate the additional vehicular and truck traffic for Lot 47 shall be added to the applicant’s driveway solely from land within Lot 47; and
  - **Signage** - The Project’s signage shall follow the guidelines in Exhibit 14A7 pages 90–96, and 156–163, with the exception of the location of upper-level signage, which shall be limited to M Street, S.W. One upper-level sign may be located as shown on Exhibit 14A7 page 92, but with the right edge of the sign extending no further east than a line extending upward from the rightmost edge of the 9<sup>th</sup> and 10<sup>th</sup> floor fenestration of the bay that is immediately below it. A second upper-level sign may be located on the parapet above the 5<sup>th</sup> bay west of the 9<sup>th</sup> and 10<sup>th</sup> floor setbacks from South Capitol Street.

39. OP submitted a November 10, 2020 report (Ex. 55, the “Supplemental OP Report”), analyzing the updates to the Application following the October 1, 2020 public hearing, and:

- Confirmed that the affordable housing requirement for the penthouse residential space would be met; that “[t]here is no other IZ requirement in the D-5 zone;” and that the Applicant was voluntarily providing an additional 19 on-site non-IZ units to be reserved for the life of the project at 80% MFI;
- Requested the Applicant provide the following information:
  - Submit a plan showing the proposed location of the approximately 616 square feet of IZ space required for the penthouse residential units; and
  - Clarify whether the newest design proposes the incorporation of 750 square feet of solar panels; and
- Reiterated OP’s recommendation that the Commission approve the Application subject to two conditions in addition to the Original OP Report’s proposed easement and signage conditions:
  - DDOT should submit confirmation to the record that the design of the building and the proposed north-south driveway to be entered from L Street, S.W., would enable reasonable access to parking and loading for a future building on Lot 47; and
  - The Applicant should record the proposed easement agreement with the owner of Lot 47 prior to the issuance of a building permit.

40. At the November 12, 2020 public hearing, OP testified in support of the Project and reiterated conclusions from its reports that the Project complies with all applicable design review requirements (Nov. 12 Tr. at 87).

41. OP submitted a January 8, 2021 report (Ex. 66, the “Post-Hearing OP Report”), stating that:

- The unit mix of the below-market-rate non-IZ units would be proportional to the mix of market-rate units, which would include 3-bedroom units. OP asked the Applicant to note for the record that there would be at least one 3-bedroom unit among the 60% Median Family Income non-IZ units the applicant intends to provide; and
- OP continued to recommend approval contingent on revised condition language concerning the easement agreement with Lot 47, to which the Applicant and the Lot 47 Owner had agreed (Ex. 66 at 1-2).

### **DDOT RESPONSES**

42. DDOT filed a September 18, 2020 report (Ex. 16, the “DDOT Report”), stating that:
- DDOT concluded:
    - The Project would generate a moderate amount of vehicular traffic and a significant amount of walking and transit trips;
    - The CTR correctly determined that five of the study intersections would unacceptably degrade in level of service as a result of the Project; and
    - The TDMP proposed by the Applicant’s CTR was not sufficiently robust to offset the Project’s high parking ration or mitigate the impacts to the affected intersections; but
  - Despite these issues, DDOT had no objection to the approval of the Project subject to the following conditions:
    - The Applicant record a non-restrictive easement with the Office of the Surveyor and accompanying easement agreement with DDOT for a portion of the north-south driveway adjacent to Lot 47 to ensure vehicular access is available to that property when it redevelops; and
    - Implement the TDMP proposed in the Applicant’s CTR, with the following additions:
      - Providing curb extensions at the three (3) Half and L Streets, S.W., intersections surrounding the site.
      - Including the short missing segment of sidewalk on the north side of L Street, S.W.;
      - Providing two (2) four-dock expansion plates to the existing Capital Bikeshare (“CaBi”) station at M Street SW & 1st Street SW; and
      - Providing five (5) years of annual CaBi passes to all residents (1 per unit).
43. At the November 12, 2020 public hearing, DDOT testified in support of the Project stating that:
- The Applicant had agreed to all of DDOT’s conditions, including the revised TDMP, the additional conditions noted in the DDOT Report, and a contribution to DDOT's Transportation Mitigation Fund to be used towards bike-ped transit and Bikeshare improvements around ANC 6D (Nov. 12 Tr. at 87-88); and
  - DDOT also confirmed its support for OP’s two easement conditions (Nov. 12 Tr. at 88).
44. DDOT submitted a January 8, 2021 report (Ex. 67, the “Post-Hearing DDOT Report”), stating that DDOT had worked with the Applicant and the Lot 47 Owner to develop language for an easement agreement for shared driveway access on L Street, S.W., that is the same as what was stated in Post-Hearing OP Report.

## ANC REPORTS

45. ANC 6D submitted a September 24, 2020 report (Ex. 19, the “First ANC Report”), stating that at its regularly-scheduled and properly-noticed September 14, 2020 public meeting, with a quorum of Commissioner present, ANC 6D voted to:

- Express the following issues and concerns:
  - The Project does not provide the “gateway” architectural transition from the mixed-use neighborhood on the east side of South Capitol Street to the residential neighborhood on the west side, and the Applicant should lower the portion of the building that fronts on South Capitol Street to create a “more visually compelling and physically welcoming entry” to the neighborhood;
  - The Project does not reflect the “various architectural elements of the Southwest neighborhood” and does not include enough balconies or varying building heights like those present in other buildings within the neighborhood, including the recently approved Bard complex;
  - The Project appeared jumbled with “boxy squares” and “teetering windows” and did not allow for sufficient air, light, or views. Accordingly, the ANC requested that the Applicant incorporate more modernist elements into the building design, citing various residential developments throughout Southwest (i.e., Tiber Island, Carrollsburg Square, the Randall School, the Bard) that the Project should emulate.
  - The Applicant did not demonstrate how the Project fits within the confines of the SW Plan or the six design principles set forth in the SW Plan as follows:
    - Principle 1: The Project does not provide lower building heights that complement the mix of lower rise buildings and row houses in the surrounding area;
    - Principle 2: The Project does not achieve design excellence because it has an “industrial look of tissue boxes” that appear to jut out into pedestrian space;
    - Principle 3: The Project does not promote a cohesive design with three separate “buildings” that are so busy that there is no continuity to the streetscape and no unification between the Project components;
    - Principle 4: The Project should incorporate public access to Lansburgh Park and should preserve the existing Heritage Tree abutting the Property and the Special Trees on the Property;
    - Principle 5: The Applicant should provide information on how the Project meets the requirements for OP’s Flood Resilience Strategy; and
    - Principle 6: The ANC requested that the Applicant (i) finalize the easement with Lot 47 before the Application is approved; and (ii) include a clause in tenant leases indicating that they will not be eligible for Residential Parking Permits (“RPP”). The ANC also stated that the Applicant did not provide a proper trip generation and it therefore could not analyze the impact on traffic, and that the Applicant has not provided any plans for its retail space; and
  - Requested additional information on the following issues:
    - Details on the Applicant’s lighting plan for the Project, including a commitment that the Project would not include any neon lighting;
    - Additional details on the Applicant’s signage plan for the Project, including a commitment that the Project would not include any digital signs.
    - Commitment from the Applicant to preserve the existing Heritage Tree abutting the Property;

- Request that the Commission postpone the hearing and require the Applicant to work with the ANC to resolve its concerns; and
  - Oppose the Application and authorize Chair Gail Fast as the ANC’s representative.
46. The ANC submitted a September 24, 2020, letter (Ex. 19A, the “ANC Letter”) regarding the Applicant’s affordable housing commitment and which recognized that while the “IZ requirements are not part of the Zoning Commission’s purview with respect to design review” the Applicant “ought to” still provide affordable housing.
47. ANC 6D submitted a November 10, 2020 report (Ex. 54, the “Second ANC Report”), stating that at a regularly-scheduled and properly-noticed October 27, 2020 special public meeting, with a quorum of Commissioners present, ANC 6D voted to:
- Express the following issues and concerns:
    - While the ANC had met with the Applicant following the October 1, 2020 public hearing, to discuss its concerns, it still believed that the Project was “architecturally heavy-handed, domineering and unwelcoming,” did not provide sufficient tiering along M Street as it moves towards the Southwest neighborhood, and lacks continuity between the various building components;
    - The ANC did not care for the design of the tilted hopper windows on M and South Capitol Streets;
    - The ANC did not care for the design of the hanging balconies on L and Half Streets, S.W.;
    - Requested that the Applicant use the concrete framing as an “exoskeleton” to wrap the entire Project;
    - The Maisonette entry stair design is “industrial” and therefore not consistent with character of Southwest.
    - The ANC believed that the parking and loading space will be inadequate if the commercial tenant is a grocer, and if not a grocer, the ANC stated that the zoning order should restrict the Applicant from operating or leasing out any portion of the parking garage to any parking company to serve anything other than tenants within the building;
    - The Applicant’s proposal to extend the east façade of the North Tower over the private drive raised concerns that the additional units on L Street, S.W., that extend over the private drive could create at-risk windows, impact light and air to those units, and establish a condition where the parking and loading entrance would be located directly below residential units; and
    - The ANC believes the Applicant’s proposal to provide 19 Non-IZ Affordable Units, was not a high enough number of units and were not being provided at a deep enough level of affordability; and
  - Continue to oppose the Project.
48. ANC 6D submitted a January 7, 2021 report (Ex. 64, the “Third ANC Report”), stating that at its regularly scheduled and properly noticed special meeting on December 14, 2020, at which a quorum was present, the ANC voted to:

- State that the Applicant and ANC had met several times and the Applicant had changed several aspects of the Project to address the ANC's issues but the ANC continued to have the following issues and concerns:
  - The ANC continued to be dissatisfied with the design of the Project's M Street, S.W., façade, and a desired it to have "greater tiering" and a greater number of south facing balconies;
  - The Applicant's changes to the balcony scheme did not address the ANC's concerns and resulted in a more "top heavy" building and potential obstructions to the views of the Capitol;
  - The overall design of the various building sections lacks a coherent design strategy so that the section along Half and L Streets, S.W., bears almost no resemblance to the section along South Capitol and M Streets; and
  - The ANC continued to take exception to the Applicant's position on providing affordable housing. While the ANC understood that the Applicant was not strictly required to provide additional affordable units, the ANC believed that the 20 proffered units was insufficient to contribute to the housing needs of the Southwest or the District as a whole, or to meet the goals of the Small Area Plan ("SAP"); and
- Take no additional action regarding the Application, and therefore confirmed its previous opposition to the Project.

**LOT 47 OWNER**

49. The Lot 47 Owner's party status request (Ex. 53A) raised the following objections to the Project:
- The revised plans for the Project, as presented to ANC 6D on October 27, 2020, indicate that the east wall of "Phase B" of the Project would extend over the private drive at L Street that is proposed to be shared between the Project and Lot 47, and the width of the proposed private drive would be reduced from 22 feet to 20 feet. The extension of this east wall results in the placement of columns running along the private drive for entire north-south length of Lot 47 which limits space for trucks and cars to enter, maneuver within, park or exit from a future development on Lot 47. The purpose of the proposed private drive (and the attendant easement) is to comply with DDOT's desire to permit only one curb cut on L Street, S.W., for the entire Square (*see* Exhibit 16 to the record) and with the Zoning Regulations prohibition against curb cuts on South Capitol Street (*see* Subtitle I § 616.7(e)); and
  - The revised construction of Phase B over the private drive also does not leave sufficient vertical clearance for PEPCO vaults to be placed on either property.
50. At the November 12, 2020 public hearing, the Lot 47 Owner testified that it was opposed to the Project because:
- The revised design would limit its options for the future development of its property due to the driveway easement location proposed by OP and the DDOT policy of permitting only a single curb cut on the block; and
  - The OP condition should require a voluntary easement agreement between it and the Applicant, as a unilateral covenant would amount to a taking of its property, citing *Nathanson v. BZA* case (Nov. 12 Tr. at 111-120).

51. The Lot 47 Owner submitted a January 7, 2021 letter (Ex. 63), withdrawing its opposition stating it had reached an agreement with the Applicant, including that, prior to issuance of a building permit for the Project, the Applicant must:
- Obtain public space approval for curb cuts on L and Half Streets, S.W.; and
  - Record an easement agreement allowing 1101 South Capitol to share use of the private driveway, among other things. The north-south easement area will have a clear width of no less than 22 feet and a minimum vertical height clearance of 18 feet. The east-west easement area, which would be temporary in nature, would have a clear width of no less than 20 feet and a minimum vertical clearance height of 14 feet, 6 inches.

#### **OTHER RESPONSES**

52. Several residents of the surrounding neighborhood submitted letters in opposition to the Application (Ex. 15, 18, 20-26, 28-31, 33-34, 37-39, 41-48) and three individuals testified in opposition to the Project at the public hearing (collectively, the “Opposition”). The Opposition raised the following concerns:
- The Southwest neighborhood needs more affordable housing units at deeper levels of affordability and at a range of unit sizes supportive of a diverse population including families, and the housing and affordable housing in the Project does not satisfy those needs. The Opponents specifically stated that the Project should be comprised of one-third “deeply affordable” units, 1/3 “workforce housing” units, and one-third market rate units (Ex. 33, 34);
  - Longtime residents and particularly residents of color were being forced out of the neighborhood as a result of recent development trends favoring smaller “luxury housing” units and increased rent prices which the Project would further exacerbate (Ex. 21-22, 29-30); and
  - Due to these impacts, 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 affordable housing goal.
53. Councilmember Charles Allen submitted an October 1, 2020 letter (Ex. 40), opposing the Project’s design because it:
- Did not adequately address the goals of the Small Area Plan;
  - Is out of character with the surrounding neighborhood and “dramatically dwarfs the homes immediately to the south;”
  - Lacks a cohesive and unified vision for how to site mixed-use functions;
  - Does not encourage a mix of building heights needed to create a “significant sense of place and active public realm”; and
  - Did not contain an adequate amount of affordable housing;
- The letter encouraged the Applicant to redesign the Project with further input from ANC 6D.
54. Councilmember Allen submitted a January 7, 2021 letter withdrawing his opposition (Ex. 62), due to the Applicant’s design changes and because the Applicant had increased the affordable housing in the Project.

## CONCLUSIONS OF LAW

1. Pursuant to the authority granted by the Zoning Act, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.), the Commission may approve a design review application consistent with the requirements of Subtitle I §§ 616.6 and 616.8 and Chapter 7.
2. Pursuant to Subtitle I § 616.6 and 616.8, the Project requires design review under Subtitle I, Chapter 7, because the building fronts on a designated primary street segments of M and South Capitol Streets Sub-Area. The applicable provision of Subtitle I, Chapter 7, are set forth in Subtitle I, § 701.2(a). Subtitle I, §§701.2(a) provides that in addition to the provisions set forth therein, the Applicant must also meet the special exception standards of Subtitle X, Chapter 9.
3. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl); *see also* Subtitle X § 901.2) authorizes the Commission to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Commission, the special exception:
  - *Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,*
  - *Will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and*
  - *Complies with the special conditions specified in the Zoning Regulations.*
4. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Commission's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." (*First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973) .)

### DESIGN REVIEW

5. The Commission concludes that the Application has satisfied the applicable Design Review standards for the M and South Capitol Street Sub-Area of Subtitle I § 616, which require the Application also meet the general design review criteria of Subtitle I, Chapter 7 and the special exception standards of Subtitle X § 901.2, as detailed below.

### M and South Capitol Streets Sub-Area Design Review Criteria (Subtitle I, Chapter 6)

6. The Commission concludes that the Project satisfies the applicable standards of Subtitle I § 616.7(d), (e), and (g) for the M and South Capitol Streets Sub-Area because:
  - **Subtitle I § 616.7(d)** - The Project provides a 1:1 setback from the building line along South Capitol Street above 110 feet in height;



- **Subtitle I § 616.7(e)** - There are no openings adjacent to South Capitol Street that provide entrances or exits for parking and loading. All parking and loading access is provided via L and Half Streets, S.W.; and
- **Subtitle I § 616.7(g)** - A minimum of 60% of the building's street-wall is constructed on the setback line, which for the Property is the eastern property line along South Capitol Street. (See Subtitle I § 616.7(a)). Specifically, a minimum of approximately 66% of the streetwall is constructed on the setback line.

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

7. The Commission concludes that the Application satisfies the applicable M and South Capitol Street Sub-Area design review standards of Subtitle I § 701.2(a) because:

- **Subtitle I § 701.2(a)(1)** - The Project helps to achieve the objectives of the M and South Capitol Street Sub-Area by providing:
  - A strong street wall and setbacks at 110 feet along South Capitol Street to preserve the important view of the Capitol Dome;
  - Adding new ground floor retail that will improve the vibrancy of the street through a mix of uses; and
  - Improving the streetscape and pedestrian experience with large storefront windows at the ground level, and new paving, street trees, understory plantings, and pedestrian-scaled features including new lighting, benches, bicycle racks, and trash and recycling receptacles;
- **Subtitle I § 701.2(a)(2)** -The Project is in context with the surrounding neighborhood and street patterns. The Project offers distinct façade designs at each elevation, provides active ground floor retail and amenity spaces, and consolidates parking and loading internally with access from L and Half Streets, S.W., to minimize impacts on existing streets and uses. This configuration will maximize active street frontage along South Capitol Street and significantly improve the public realm. In addition, the Project responds to the many different contexts and design aesthetics in which the Property is located. The building base is scaled to complement the rowhomes to the south through its two- to three-story mass and direct walk-up units. The L and Half Street, S.W., facades imitate historic Southwest architecture with a gridded brick pattern between stories and traditional residential balconies, while the M Street, S.W., and South Capitol Street façades are comprised of a more modernist grid that reflects more recent design aesthetics in the Southwest neighborhood;
- **Subtitle I § 701.2(a)(3)** - The Project minimizes vehicular and pedestrian conflicts. Parking and loading access into the Property is designed to be provided on L and Half Streets, S.W., rather than from M Street, S.W., or South Capitol Street. All vehicular pick-up and drop-off activities will occur within a designated area in the private drive, further minimizing potential conflicts between vehicles and pedestrians. In addition, the loading facilities can accommodate front-in and front-out truck movements;
- **Subtitle I § 701.2(a)(4)** - The Project has been designed to minimize unarticulated blank walls adjacent to public spaces through facade articulation on all street-facing elevations. The ground floor levels include active uses with clear windows and extensive architectural expression. High-quality materials are used throughout, including brick, metal, wood composite, and glazing. Significant setbacks and outdoor courts and

terraces are also provided to increase visual interest and enhance the overall aesthetic of the building within its context. The party walls that abut Lot 47 have also been articulated to provide some visual interest until that property is developed; and

- **Subtitle I § 701.2(a)(5)** -The Project has been designed to minimize its impact on the environment. The Project will meet the standards of LEED Silver under LEED v4 for Building Design and Construction and will incorporate various sustainable features, including solar panels.

### **Special Exception Standards (11-X DCMR § 901.2)**

8. The Commission concludes that the Application satisfies the requirement of Subtitle I § 701.2(a) to meet the special exception standards set forth in Subtitle X, Chapter 9 because:

- **Subtitle X § 901.2(a)** - The Project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps for the D-5 zone because the Project meets all of the dimensional and use requirements for a site within the M and South Capitol Streets Sub-Area and complies with the development and use standards for the D-5 zone. The Project is also fully consistent with the goals of the Sub-Area to preserve the axial view of the Capitol and further the development of South Capitol as a vibrant, high-density and mixed-use corridor; and
- **Subtitle X § 901.2(b)** - The Project will not tend to affect adversely the use of neighboring property because the proposed height and density of the Project is consistent with the surrounding massing and neighborhood character. The proposed residential use is consistent with uses in the surrounding area. The proposal to create centralized access for vehicles and loading – along with the commitment to provide access for and work with the owner of Lot 47 – will minimize any potential conflicts between pedestrians and vehicles. In response to the specific potential impacts raised by the Lot 47 Owner, the ANC, and the Opposition the Commission concludes the following:
  - ***Constraints on Lot 47 Owner’s ability to access and develop its site*** - The Commission concludes the terms of the agreement between the Applicant and the Lot 47 owner regarding the layout and operation of the private driveway that will be used to access the Property and future development on Lot 47 are sufficient to ensure that the Project will not adversely affect the Lot 47 Owner. The conditions of this agreement will be included as conditions of the Commission’s approval in this Order;
  - ***Consistency with the CP*** - The Commission concludes that the Applicant has no obligation to show the Project is consistent with the Comprehensive Plan, or other planning documents such as the SW Small Area Plan because the applicable design review regulations do not impose an obligation to show the application is consistent with the CP or other planning documents.<sup>4</sup> The Zoning Commission has consistently

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<sup>4</sup> The only provision in the Zoning Regulations that requires a showing that a design review application is not inconsistent with the Comprehensive Plan or other planning documents is found in Subtitle X, Chapter 6. It also provides that projects that are subject to design review due to their location with frontage on a designated street segment identified in Subtitle I, such as this one, are *specifically exempted* from the standards of Subtitle X, Chapter 6 (see Subtitle X § 601.1).

- determined that in a design review case its authority is limited to whether the applicant has met the design review standards specific to that property. Notwithstanding this conclusion, the Commission acknowledges that the Applicant submitted extensive evidence showing how the Project was “not inconsistent” with the CP and the SW Plan and concludes that it is not inconsistent with the CP as a whole, or with the SW Plan’s design principles;
- ***Gentrification and Displacement*** - The Commission concludes that the Project will not adversely affect neighboring properties through gentrification and displacement because:
    - The rising housing costs in the area are primarily caused by market forces including the constrained supply of housing in the neighborhood and region and the increased demand for housing. The Commission credits the Applicant’s studies that conclude that increasing the supply of housing, at all price ranges, is the most effective way to mitigate rising housing costs;
    - The Project will increase the overall supply of housing, and the supply of housing that is affordable to those who make no more than 60% of MFI, and this will put downward pressure on market housing prices;
    - The Project will not directly cause displacement of current residents because it is a largely empty site improved only with a small retail store; and
    - While the rents for the market rate units in the Project will be higher and the influx of new, more affluent residents may change the neighborhood’s character and affect housing prices, the Commission still concludes that the Project’s positives, namely the production of new market rate and affordable housing on a largely empty site, outweigh the potential negatives; and
  - ***Affordable Housing*** - The Commission concludes that the Project fully satisfies the affordable housing requirements under the IZ regulations applicable to the Property, and that the provision of any additional affordable housing over and above the minimum IZ required falls outside of the Commission’s review for the D-5 zoned Property under the Design Review regulations of Subtitle I § 616 and Chapter 7 and of Subtitle X § 901.2. The Commission notes that the Applicant agreed voluntarily to provide 19 Non-IZ Affordable Units and to memorialize this commitment through recordation of a covenant, which has occurred prior to the issuance of this Order approving the Application.

**“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP**

12. The Commission must give “great weight” to the recommendation of OP, pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016).)
13. The Commission finds OP’s analysis of the Project and recommendation to approve the Application persuasive, concurs in that judgment, and adopts the conditions as stated in the Post-Hearing OP Report.

**“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC**

14. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl) and Subtitle Z § 406.2. To satisfy this great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
15. The Commission considered the ANC Reports’ issues and concerns, and notes that the Applicant made a number of commitments and design changes including agreement to conditions regarding lighting and signage, changes to the material of the “exoskeleton” in response to the ANC and which the ANC found acceptable. The Commission is not persuaded by the ANC’s remaining issues and concerns as follows:
- **Gateway Design** - The Commission is not persuaded by the ANC’s concerns that the Project does not provide a “gateway architectural transition between South Capitol Street and the residential neighborhoods to the east and instead concludes that the Project was appropriately designed as a “gateway” into the Southwest because the building design respects the monumental corridor of South Capitol Street, emphasizing the significance of the “corner” at the intersection of the two important streets, and creates an appropriate transition from the high-density corridor of South Capitol Street into the more residential character of the Southwest neighborhood;
  - **Southwest Architectural Context** - The Commission is not persuaded by the ANC’s concerns that the Project does not fit within the Southwest architectural context, and instead concludes that the Project helps create the desired view corridor towards the Capitol, and its use of setbacks, step downs, façade articulations, and different materials provide an appropriate transition as the building moves closer to the surrounding residential neighborhoods. Along Half Street, S.W., the use of direct walk-up units with traditional “stoops” and brick masonry respects the nearby row homes. The Commission notes that the final design incorporates the ANC’s requests for more modernist elements, including a more articulated structure, more legible floor slabs and building column grid, additional balconies, and a three-foot setback along M Street, S.W., at the ground level to create the impression that the building floats above the podium. The Applicant also converted the South Tower’s façade from brick to concrete in direct response to the ANC’s request for the Project to better mimic the surrounding architectural context. While the ANC cited various residential developments throughout Southwest (e.g., Tiber Island, Carrollsburg Square), the Commission credits the Applicant’s assertion that these developments are located within areas zoned for moderate- and medium-density development, unlike the Property that is zoned for high-density development;
  - **Consistency with the SW Plan** – The Commission is not persuaded by the ANC’s concern that the Application did not demonstrate compliance with the SW Plan and

instead concludes that pursuant to Subtitle X § 601.1, an evaluation of the Project's consistency with SW Plan, or any part of the CP, is not required as part of the subject Design Review application. Nevertheless, the Commission notes that the Applicant provided a detailed analysis of how the Project is consistent with the goals and objectives of the SW Plan (Ex. 14D) and how the Project is fully consistent with the specific design guidelines established in the SW Plan (Ex. 52B). The Commission reviewed these filings and finds that although the Project is not required to demonstrate consistency with the SW Plan, that the Project nevertheless is fully consistent with the goals and objectives of the SW Plan and with the specific design guidelines that are applicable to the Property;

- **Heritage Tree** - The Commission is not persuaded by the ANC's concern that the Applicant should preserve the existing heritage tree abutting the Property because the heritage tree is located in public space and therefore plans for the tree, including strategies to potentially save the tree, are subject to review and approval by DDOT. The Commission therefore declines to make any condition to approval contingent on any plans regarding the heritage tree;
- **Design, Setbacks, Tiering, and Continuity** - The Commission is not persuaded by the ANC's concerns about the overall design of the Project, and concerns that it does not provide sufficient tiering along M Street, S.W., and lacks continuity between the various building components. As discussed above, the Commission concludes that the Project meets the design review criteria, and the Project successfully serves as a "transition building" between the South Capitol Corridor and the more residential Southwest neighborhood, while preserving views towards the Capitol and furthering the development of a high-density mixed-use corridor along South Capitol Street. The Commission notes the specific design changes made by the Applicant in response to the ANC's concerns including:
  - Reducing the massing along both M Street, S.W., and South Capitol Street and creation of large outdoor terraces, added inset balconies, and establishment of an open re-entrant corner at the ground level;
  - Incorporating a setback at levels 12 and 13 of the North Tower with use of the pavilion façade type across the full extent of this setback, additional balconies at the corner where the North Tower meets the pavilion matching the design and proportions of the framed terraces and windows applied to the South Tower where it faces the pavilion thus creating the same geometry as the two towers meet the pavilion in the middle;
  - Eliminating all hopper-style windows and balconies in the Project at the request of the ANC;
  - Replacing the previously proposed angled hanging detail supporting the balconies with a simple cantilever, which also had the effect of making the Project appear lighter;
  - Increasing the number of balconies on the M Street façade in response to the ANC to a number the Commission concludes is sufficient to meet the relevant design review criteria, even if the total number is less than desired by the ANC; and
  - Providing recessed windows at the corners and converting all of the balconies on the South Tower to traditional inset balconies, providing a compromise to the ANC's request that the entire Project be entirely wrapped in an exoskeleton;

- **Parking and Loading Space** - The Commission is not persuaded by the ANC’s concern that parking and loading space will be inadequate if the commercial tenant is a grocer. The Commission is persuaded by the Applicant’s CTR that was scoped on the assumption that the tenant would be a grocer and concluded that the parking and loading facilities were adequate. The Commission also notes that the TDMP included a condition that the Applicant would not lease unused parking spaces to anyone other than tenants of the building. This condition has been included in this Order and will address the ANC’s concern regarding use of the on-site parking garage;
- **Additional Units on L Street Façade** - The Commission is not persuaded by the ANC’s concern with the Applicant’s proposal to extend the east façade of the North Tower over the private drive. The Commission instead concludes that constructing residential units over driveway access is compliant with the Zoning Regulations, is seen in projects throughout the District, and will not create adverse effects of residents of the Project or of the future development on Lot 47; and
- **Affordable Housing** – The Commission is not persuaded by the ANC’s concern that the Project does not include sufficient affordable housing and that the proposed affordable housing is not at a deep enough level of affordability. The Commission instead concludes that the Project meets its IZ requirement under the Zoning Regulations and the Applicant is not obligated to provide additional affordable housing as part of this design review application.

## **DECISION**

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia concludes that the Applicant has satisfied its burden of proof for the requested relief and therefore orders **APPROVAL** of the Application’s request for Design Review approval pursuant to Subtitle I §§ 616 and 701 subject to the following conditions, standards, and flexibility (where compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in **bold and underlined text**):

### **A. PROJECT DEVELOPMENT**

1. The Project shall be built in accordance with the architectural plans and elevations dated December 31, 2020, and marked as Exhibit 61A (the “Approved Plans”), subject to the following design flexibility from the Approved Plans:
  - 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, S.W., comprising approximately 6,317 square feet;
  - 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;
  - 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;

- 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;
- To locate retail entrances in accordance with the needs of retail tenants and to vary the facades as necessary;
- 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));
- 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;
- Number of Units: To provide a range in the approved number of residential dwelling units of plus or minus 10%, provided that to the extent that additional three-bedroom units are incorporated, to reduce the number of units by up to 15%;
- Parking Layout: To make refinements to the approved parking configuration, including layout and number of parking spaces of plus or minus 10%, so long as the number of parking spaces is at least the minimum number of spaces required by the Zoning Regulations;
- 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 Lot 47 Owner;
- 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;
- 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
- 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.

## **B. REQUIREMENTS - BUILDING PERMIT**

1. **Prior to the issuance of a Building Permit for any phase of the Project**, the Applicant shall demonstrate to the Zoning Administrator that (i) it has obtained public space approval for the curb cuts on Half and L Streets, S.W. shown in the Approved Plans; (ii) 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 (iii) it has provided a copy of the recorded easement agreement to the District Department of Transportation's Planning & Sustainability Division. The easement agreement shall provide, consistent with the Approved Plans, for a driveway of no less than 22 feet of clear width along the property line shared with Lot 47 and having a minimum vertical clearance of 18 feet. The easement shall further provide that if the Property is developed in a southern Phase A and a northern Phase B as set forth in this order, and Lot 47 is developed prior to the completion of Phase B, then during construction of Phase B, parking and loading access to Lot 47 shall be provided via the curb cut and driveway off of Half Street, S.W., rather than from L Street, S.W., until such time as the construction of Phase B is completed. The temporary east-west easement area shall have a vertical clearance of no less than 14 feet, 6 inches and a clear width of no less than 20 feet, as shown on the Approved Plans. Upon completion of Phase B, the temporary easement shall expire and the permanent easement from L Street, S.W. shall be implemented in accordance with the terms therein.

## **C. REQUIREMENTS - CERTIFICATE OF OCCUPANCY**

1. The Applicant shall adhere to the following TDM measures as set forth in Exhibit 52C by the noted deadlines:
  - **Prior to the issuance of the final Certificate of Occupancy for Phase A of the Project**, the Applicant shall:
    - Fund and construct a curb extension at the northeast corner of M and Half Streets, S.W., (Half Street only), subject to DDOT approval during public space permitting; and
    - Make a contribution of \$90,000 to the DDOT Transportation Mitigation Fund to be used for installation of a 19-dock Capital Bikeshare station or other pedestrian, bicycle, and transit enhancements within ANC 6D;
  - **Prior to the issuance of the final Certificate of Occupancy for Phase B of the Project**, the Applicant shall fund and construct curb extensions at (i) the southeast corner of L and Half Streets, S.W., (both L and Half Streets, S.W., wrapping the corner), and (ii) the southwest corner of L and South Capitol Streets (L Street, S.W., side only, which shall be constructed of flexiposts and striping), so long as development on Lot 47 has not commenced; and
  - **Prior to the issuance of the final Certificate of Occupancy for the Project**, the Applicant shall fund and install two (2) four-dock Capital Bikeshare expansion plates at the existing station at M and 1st Streets, S.W., at a total cost not to exceed \$16,000, subject to DDOT approval.



## **D. REQUIREMENTS - LIFE OF PROJECT**

1. **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;
  - Install building lighting that is consistent with the lighting shown on the Approved Plans and the Lighting Diagrams (Ex. 32A) and shall prohibit neon lighting on the exterior of the Project;
  - Include a rider in all residential leases, to be initialed by the residential tenant, that restricts all residential tenants of the Project from obtaining an RPP while under the terms of their lease; and
  - 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.
  
2. **For the life of the Project**, the Applicant shall adhere to the following site-wide TDM measures as set forth in Exhibit 52C:
  - Unbundle the cost of vehicle parking from the lease or purchase of each residential and retail unit and charge a minimum rate based on the average market rate within a quarter mile of the site. Free parking or discounted rates will not be provided;
  - Identify Transportation Coordinators for the planning, construction, and operations phases of the development. There will be a Transportation Coordinator for each retail tenant and the entire residential component/building. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement;
  - Will provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year. All retail employer tenants must survey their employees and report back to the Transportation Coordinator;
  - Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to the residents and employees, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications;
  - Transportation Coordinators will receive TDM training from goDCgo to learn about the TDM conditions for this Project and available options for implementing the TDM Plan.
  - Transportation Coordinator will subscribe to the applicable goDCgo's newsletters;
  - Transportation Coordinator will notify goDCgo each time a new retail tenant moves in and provide TDM information to each tenant as they move in;
  - Transportation Coordinator will provide links to CommuterConnections.com and goDCgo.com on property websites;
  - Transportation Coordinators will implement a carpooling system such that individuals working in the retail component of the building who wish to carpool can easily locate other employees who live nearby;
  - Distribute information on the Commuter Connections Guaranteed Ride Home (GRH) program, which provides commuters who regularly carpool, vanpool, bike, walk, or take transit to work with a free and reliable ride home in an emergency;

- Provide residents and retail employees who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOCG) or other comparable service if MWCOCG does not offer this in the future;
  - Will not lease unused parking spaces to anyone aside from tenants of the building (e.g., will not lease to other nearby office employees, single-family home residents, or sporting events); and
  - Within one year following the issuance of a certificate of occupancy for the Project, the Transportation Coordinator shall submit documentation summarizing compliance with the transportation and TDM conditions of the Order to the Zoning Administrator's office to evidence compliance with the TDM conditions.
3. **Following the issuance of a certificate of occupancy for the Project**, the Transportation Coordinator will coordinate with DDOT and goDCgo every five (5) years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order including the following:
- Install a Transportation Information Center Display (electronic screen) within the residential lobby (two total), containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
  - Provide at least 144 long-term and 42 short-term bicycle parking spaces, which exceed the number of spaces required by the Zoning Regulations;
  - Provide a bicycle repair station in the bicycle parking storage rooms;
  - Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids bikes;
  - Provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing [info@godcgo.com](mailto:info@godcgo.com);
  - Will meet the short- and long-term bicycle parking requirements of the Zoning Regulations for residential use. Long-term bicycle space will be provided free of charge to residents;
  - Provide one collapsible shopping cart (utility cart) for every 50 residential units to encourage residents to walk to the grocery shopping and run errands;
  - The Applicant agrees to offer and promote an annual Capital Bikeshare membership for free to each resident at initial lease up;
  - Will meet the short- and long-term bicycle parking requirements of the Zoning Regulations for retail use. Long-term bicycle parking will be provided free of charge to all employees;
  - Provide a free parking space for all vehicles that employees use to vanpool to work; not to exceed one space; and

- Coordinate with the Business Improvement District (“BID”), WMATA, and local ANC on a way finding plan along walking routes to the property from the Navy Yard-Ballpark and Waterfront Metrorail stations.


**E. VALIDITY**

1. Approval of Phase A shall be valid for a period of two years from the effective date of the Order. Within that time, the Applicant shall file a building permit application for Phase A. The Applicant shall begin construction of Phase A within three years of the effective date of the Order.
2. Approval of Phase B shall be valid for a period of two years following issuance of the first Certificate of Occupancy for Phase A. Within that time, the Applicant shall file a building permit application for Phase B. The Applicant shall begin construction of Phase B within three years of issuance of the first Certificate of Occupancy for Phase A.
3. If no Certificate of Occupancy for Phase A is issued within seven years following the effective date of this Order, the approval shall expire, unless otherwise extended by the Zoning Commission.

**VOTE (January 28, 2021): 5-0-0** (Peter A. Shapiro, Michael G. Turnbull, Anthony J. Hood, Robert E. Miller, and Peter G. May to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 20-14 shall become final and effective upon publication in the *D.C. Register*; that is on November 5, 2021.

  
 ANTHONY J. HOOD  
 CHAIRMAN  
 ZONING COMMISSION

  
 SARA A. BARDIN  
 DIRECTOR  
 OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.