

JEMAL'S COTTON ANNEX L.L.C.

300 12TH STREET, SW (SQUARE 326, LOT 806)

**PREHEARING STATEMENT OF THE APPLICANT TO THE
ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**

FOR

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

Hearing Date: March 18, 2021

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I. INTRODUCTION

This prehearing statement is submitted on behalf of Jemal’s Cotton Annex L.L.C. (the “Applicant”) in further support of an application to the Zoning Commission for the District of Columbia (the “Zoning Commission”) for special exception approval, pursuant to Subtitle I § 581 of the District of Columbia Zoning Regulations, 11 DCMR (September, 2016), as amended (“DCMR” or “Zoning Regulations”), submitted by the Applicant on December 24, 2020, as Application No. 20-34, for new construction and rehabilitation of existing improvements on property located in the D-8 zone. As described herein, the Applicant also requests variance relief, pursuant to 11-X DCMR § 1000.1, to allow courts not meeting the dimensional requirements of 11-I DCMR § 207.1, and relief from the prohibition against increasing building density within the footprint of a designated historic structure as set forth in 11-I DCMR § 200.3.

Below follows a summary of the Applicant’s statement of compliance with the respective burdens of proof for special exception and variance approval that was submitted as part of the application package in this case and included as Exhibit 3 of the record. Also included are updates to the building design made subsequent to the initial application as a result of discussions with the U.S. Commission of Fine Arts, D.C. Historic Preservation Office, Office of Planning and Department of Transportation.

II. BACKGROUND AND PROPERTY OVERVIEW

The property that is the subject of this application is located at 300 12th Street, SW (Square 326, Lot 806) (the “Property”) and is bounded by 12th Street, SW, to the west, D Street, SW, to the south, and the 12th Street Expressway to the east. To the north of the Property is Lot 807 in Square 326, which is encumbered with an 80-foot wide perpetual access easement along its southern

boundary with the Property (the “Access Easement”). The Access Easement follows the former C Street, SW right-of-way, which was formally closed in 1965 in connection with the construction of the 12th Street Expressway. The Applicant holds a non-exclusive easement for ingress and egress purposes across the area of the Access Easement (“C Street Easement Area”).

The Property is generally rectangular in shape, with a chamfered northeast corner, and contains approximately 61,672 square feet of land area. The chamfered corner is a result of the geometry and construction of the 12th Street Expressway.

On the west side of the Property is the historic Cotton Annex building, which is listed on the D.C. Inventory of Historic Sites and the National Register of Historic Places. The building is currently vacant. The Cotton Annex building footprint occupies roughly 13,287 square feet and contains approximately 85,655 square feet of gross floor area in six stories plus basement. The east side of the Property is currently utilized as a surface lot for public parking.

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

III. D-8 ZONING AND ZONING COMMISSION JURISDICTION

The Property is located in the D-8 zone. The purposes of the D-8 zone are to permit high-density development, to foster the transition of a federally-owned area south of the National Mall

into a mixed-use area of commercial, residential, cultural, arts, retail, and service uses with both public and private ownership, and to promote greater pedestrian and vehicular connectivity with an emphasis on re-establishing connections that have been compromised by previous street closings, vacations, obstructing construction, or changes in jurisdiction. *See* 11-I DCMR § 575.1. Residential and retail/service/eating and drinking establishment uses are permitted as a matter-of-right in the D-8 zone. *See* 11-I DCMR § 302.1; 11-U DCMR §§ 515.1(a); 512.1(k); and 501.2.

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

As part of the special exception to be considered under 11-I DCMR § 581, the Zoning Commission may hear and decide any additional requests for special exception or variance relief needed for the Property, and such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval. *See* 11-I DCMR § 581.5. The Applicant is requesting variance relief related to open court dimension requirement and building density limitation on historic building footprint, as discussed below.

IV. PROPOSED PROJECT

The Applicant proposes to sensitively rehabilitate and incorporate the landmark structure into a 12-story apartment house with the addition designed in the form of a reverse “C” shape around a central courtyard (the “Project”). The Project will contain approximately 610 rental apartment units and approximately 1,552 square feet of ground floor retail/service/eating and

drinking use. The overall project will contain approximately 455,010 square feet of gross floor area (7.38 FAR), of which approximately 90,038 square feet of gross floor area will be located within the footprint of the historic resource, and will have a maximum building height of approximately 118 feet 8 inches, not including penthouse.

Residential density in the D-8 zone is subject to the Inclusionary Zoning requirements and bonuses of Subtitle C, Chapter 10. *See* 11-I DCMR § 576.3. In the case of the Property, the Inclusionary Zoning requirement equals the sum of: (a) the greater of eight percent (8%) of the gross floor area dedicated to residential use excluding penthouse habitable space or fifty percent (50%) of the bonus density utilized; and (b) an area equal to eight percent (8%) of the penthouse habitable space as described in Subtitle C § 1500.11. *See* 11-C DCMR § 1003.2. Given that no bonus density is available in the D-8 Zone, the Inclusionary Zoning requirement for the Project is eight percent, which the Project is fully satisfying as demonstrated on Sheet 52 of the Attached Drawings, resulting in a total of approximately 37,281 square feet of residential gross floor area, including from penthouse habitable space, dedicated to Inclusionary Zoning units within the Project.

In coordination with the DC State Historic Preservation Office, the Applicant has developed a scope of work to preserve, restore, and rehabilitate the vast majority of the landmark building, as detailed on Sheets 9 and 10 of the Architectural Drawings, while creating a building addition that is sympathetic to the historic building and its original expansion plan in terms of scale and footprint, in the process providing a buffer between the landmark and new construction. The only portion of the existing building proposed for demolition and replacement is a 1980s-era stair tower addition located along the south wall of the building. Immediately adjacent to the stair tower, fronting 12th Street, SW, is a one-story appendage to the historic building that historically served as a transformer vault. While this vault space is proposed to be preserved as part of the Project, it

serves as the location that generates the Applicant's request for building density zoning relief detailed below.

The proposed addition is also carefully scaled to provide a transition in height, measuring approximately 88 feet in height along its northern frontage then increasing in height to approximately 118.75 feet in height at its south, with similar height differentiation occurring from west to east across the Property. This massing approach focuses overall height and density in the east and southeast quadrants of the Property, where taller heights and more modern design are better contextualized with newer construction to the south across Maryland Avenue, SW, and to the east along 10th Street, SW. The building penthouse is likewise shaped to provide a two-story penthouse with habitable units and space on the lower penthouse level and mechanical above, while meeting required setbacks and minimizing overall volume.

Given the Property's multiple public frontages, the Project has been designed "in the round" and contextualizes with existing and proposed development to its west, north and south. As a result, the design offers fully articulated treatments along every facade of the building.

The landmark building will be renovated to contain approximately 95 of the overall 610 dwelling units proposed for the Project along with a fitness center, leasing office and amenity spaces. The remaining approximately 515 dwelling units along with the main building lobby, additional amenity space, approximately 1,552 square feet of ground floor retail/service/eating and drinking space, approximately 110 parking space and loading operations will be located within the C-shaped new addition, creating a large central courtyard space within the building. Vehicular ingress and egress and front-in front-out loading access are accessible along the north frontage of the building pursuant to the Access Easement across the former segment of C Street, SW.

Given the Property’s location, it is subject to review by the United States Commission of Fine Arts (“CFA”) pursuant to the Shipstead-Luce Act. The Applicant met on multiple occasions with CFA staff and formally presented to the CFA at its November 19, 2020, public meeting and again at its January 21, 2021, public meeting. The Project was well-received by the Commission in terms of its treatment of the landmark and the overall scale and design direction of the new building addition and its appearance from the National Mall in particular. The Commission granted concept approval for the Project at its January meeting. Approval letter is attached.

The Applicant has also worked extensively with the District of Columbia Historic Preservation Office (“HPO”). HPO staff reviewed the application materials as well as the concept approval action taken by the CFA and confirmed to the Applicant that review of the Project by the Historic Preservation Review Board (“HPRB”) is not required given the CFA action to approve. See attached letter of approval from HPO.

V. SPECIAL EXCEPTION (D-8)

Set forth below is a summary of the Application’s satisfaction of the criteria applicable to special exception approval in general, as established in Subtitle X Chapter 9 of the Zoning Regulations as well as the more specific criteria applicable to development in the D-8 Zones.

A. Compliance with 11-I DCMR § 581.1

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

1. Subtitle X Section 901.2

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

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

One of the primary purposes of the Downtown (“D”) zones is to provide for the orderly development of areas deemed appropriate for high-density mixed-use development. See 11-I DCMR § 100.1. As related to the Project, the D zones are intended to, among other things, (i) protect historic buildings while permitting compatible new development, (ii) provide for the return of historic L’Enfant streets and rights-of way, (iii) and encourage the development of housing, including affordable housing, in Central Washington. See 11-I DCMR § 100.2. Specifically, the D-8 zone is intended to “foster the transition of a federally-owned area south of the National Mall into a mixed-use area...and to promote greater pedestrian and vehicular connectivity with an emphasis on re-establishing connections that have been compromised by previous street closings, vacations, obstructing construction, or changes in jurisdiction.”

The Project will be in harmony with the general purpose and intent of the Zoning Regulations and is consistent with the purposes of the D-8 zone. The Project will promote public health and safety by redeveloping a long underutilized property with a well-designed residential project that will advance District and federal goals for this part of Southwest, and will help the District achieve its housing and affordable housing goals by adding more than 600 new dwelling units, including approximately 48 Inclusionary Zoning units. The design of the Project will not cause adverse impacts to light and air, and the added residential will not result in undue concentration of population. Indeed, the new residential units will add vitality to a primarily federal commercial enclave. Approximately 16 percent of the dwelling units will contain private

open space in the form of balconies and terraces, in addition to the generous amount of open space provided at the roof and terrace levels, the corner courtyard and the large interior courtyard.

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

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

The Project will not have any adverse impacts on the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The height, massing, and materials of the Project have been designed in a manner that relates to the Property's immediate surroundings. The proposed height of the building is well below the 130-foot maximum height permitted under the Zoning Regulations. In addition, the thoughtful massing of the Project, with height increasing toward the east and south, and the width of the surrounding streets will effectively minimize any potential for adverse impacts to light and air on neighboring properties. Notably, to the extent there is any potential for impacts to light and air to the proposed hotel project to north, any such impacts will be minimized by the substantial height and massing reductions provided at the north end of the Project and the separation provided by the C Street Easement Area.

The proposed residential and retail/service/eating and drinking uses also will not adversely impact the use of neighboring properties. The proposed residential and retail/service/eating and drinking and related uses are expressly described in the Maryland Avenue Small Area Plan and SW EcoDistrict Plan as being critical to revitalizing this portion of Southwest. The residential uses will enliven the area, particularly during off-peak weekday hours and weekends when the surrounding office buildings are not fully occupied. The Project will provide more than half of the 1,000 new dwelling units that are referenced in the Maryland Avenue Small Area Plan as necessary to establish the critical mass to support significant retail and service uses. Finally, the proposed retail/service/eating and drinking use, albeit small, will provide an additional amenity to residents, workers, and visitors to the area.

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

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

2. Section 581.2

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

The Maryland Plan takes a detailed look at what is needed to reestablish Maryland Avenue as the grand urban boulevard envisioned in the L’Enfant Plan. The Maryland Plan was prepared by the Office of Planning, in coordination with the National Capital Planning Commission’s (“NCPC”) efforts at the time to prepare the Southwest EcoDistrict Plan. Both planning efforts were informed by the Monumental Core Framework Plan (prepared by NCPC and CFA) and the Center City Action Agenda. In addition to reestablishing Maryland Avenue, a major focus of the

Maryland Plan is to create a more lively and sustainable land use mix in the area of Southwest between the National Mall and the SE/SW freeway, consistent with the planning efforts noted above. The Maryland Plan also seeks to better connect the avenue to the street grid and key activity nodes, and improve pedestrian and bicycle circulation and access to transit. Finally the Maryland Plan strives to create a high-quality, sustainable public realm.

The Project will help achieve all of the stated objectives of the Maryland Plan, particularly as it relates to land use and the desire to add vitality to the area. The Maryland Plan identifies restaurants/cafes, residential, retail, and parks as the most desirable uses to help achieve a more balanced use mix to complement the strong office presence that currently exists. To those ends, in addition to the several hundred new dwelling units proposed, the Project also will include an approximate 8,800 square foot landscaped courtyard at 12th and C Streets that will be available to the public, and approximately 1,552 square feet of retail/service/eating and drinking or related uses at the corner of 12th and D Streets.

The most notable aspect of the Project is the proposed residential program. To successfully activate this area of Southwest, the SW EcoDistrict recommends a goal of 30% of new development being comprised of residential and hotel uses, and the Maryland Plan stipulates a minimum of 1,000 new residential dwelling units are necessary to begin attracting significant retail. Both of these plans target underutilized sites as ideal for new residential development and specifically identify the Cotton Annex site as a prime candidate with a capacity of approximately 520,000 square feet. Consistent with the above stated targets and goals, the Project will contain approximately 453,458 square feet (approximately 610 dwelling units) of residential development. This amount of residential use, 8% of which will be devoted to affordable housing in fulfillment

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

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

The Project will also help reinforce the Maryland Avenue corridor as a prominent L'Enfant avenue on axis with the U.S. Capitol. The proposed height and mass of the building's southern facade will strengthen the definition of the Maryland Avenue corridor and the viewshed toward the U.S. Capitol.

The Project will improve pedestrian and bicycle connectivity and help create a quality, sustainable public realm. As part of the Project, the streetscape along 12th Street, SW, will be reconstructed to District standards, including new paving, tree boxes, and short-term bicycle parking. Notably, the existing curb cut along 12th Street will be removed since all parking and loading access to the building will be located on the north, adjacent to the C Street Easement Area. Open space and outdoor seating will be provided in the landscaped courtyard near the main entrance at C Street. Additional sidewalk space and seating will also be provided outside the

retail/service/eating and drinking space at D Street where the new construction is set back from the property line to align with the historic Cotton Annex.

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

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

Consistent with this subsection, the proposed height, massing, and siting of the new construction respects vistas to the U.S. Capitol, Washington Monument, and the Smithsonian Institution's original building. From a siting perspective, the Property is not located along any vistas that directly align with the U.S. Capitol, Washington Monument, or the Smithsonian Castle. Notwithstanding, the height and massing of the Project have been developed in a manner that is

sensitive to the site's proximity to the former Maryland Avenue corridor to the south, the National Mall to the north, and to the historic Cotton Annex itself.

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

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

Along the east and south sides of the Project, the height and massing increase in response to existing taller buildings along 10th Street (L'Enfant Promenade) and south of the former Maryland Avenue corridor, as well as the former corridor itself. As shown on Sheets 8 and 9 of the Architectural Drawings, the approximate height of the buildings along the L'Enfant Promenade range between 80 - 130 feet, with lower buildings closer to the National Mall and taller buildings toward Banneker Park. In addition, the buildings to the immediate south of the Project have approximate heights of 100 - 130 feet.

With respect to Maryland Avenue, the portion of this important corridor has been formally closed between 9th and 12th Streets, SW, including the portion directly south of the Project. Should this portion of Maryland Avenue ever be reestablished, the height and mass of the Project's southern facade has been designed to address and strengthen the Maryland Avenue corridor and the viewshed toward the U.S. Capitol. This condition is consistent not only with the objectives of the Maryland Plan but also with the objectives of the SW EcoDistrict Plan, the Monumental Core Framework Plan, and the 1910 Height of Buildings Act, all of which support taller buildings along the District's wide avenues, particularly those on axis with major public buildings.

- b. Greater connectivity shall be achieved for pedestrians and vehicles both within the area and the adjacent area and shall be based on historic street rights-of-way, particularly including:*
 - i. Maryland Avenue, S.W. and the former right-of-way of that avenue between 6th and 12th Streets, S.W.;*
 - ii. C Street, S.W., between 7th and 12th Streets, S.W.; and*
 - iii. 12th Street, S.W., 11th Street, S.W., and the L'Enfant Promenade/10th Street, S.W., between Independence Avenue, S.W and D Street, S.W.;*

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

- c. Conflicts between vehicles and pedestrians shall be minimized;*

To minimize vehicle and pedestrian conflicts, the Applicant initially proposed to locate its vehicular parking access point from its northern property line and across the C Street Easement

Area while utilizing an existing curb cut along 12th Street, SW, for its loading access. This was done to address the Property's unusual access constraints, its frontages to the south and east being components of the highway system and its northern frontage being private property subject to the C Street Easement Area.

As a result of further study by the Applicant and coordination with DDOT, the Applicant now proposes to remove the loading access point from 12th Street and combine the parking and loading into a single access point from the C Street Easement Area. The Applicant will be providing "front-in-front-out" loading access as well as a ramp to a single level of below grade parking for approximately 110 vehicles as shown on the attached turning radius diagram. Revisions to the building facades and plans to reflect this refinement can be seen at Sheets 17, 18, 21, 30, 42 and 43 of the Architectural Drawings.

To further minimize vehicular conflicts as well as traffic impacts of the Project, the Applicant has worked with DDOT to arrive at a series of transportation demand management ("TDM") initiatives that are described more fully in the Comprehensive Transportation Review ("CTR") previously submitted to the record under separate cover and included as Exhibit 9 of the Record. Attached hereto is additional technical data supporting the findings and conclusions in the CTR and demonstrating the turning radius for loading operations from the C Street Easement Area. The proposed TDM measures include unbundling the price of parking from the lease agreement and charging market rates for parking; agreement not to lease unused parking to anyone outside of building; installation of transit information center in building lobby that provides information related to public transit alternatives; establishment of a transportation coordinator to provide residents up-to-date information regarding transit options, carpooling, and to serve as a point of contact with DDOT.

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

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

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

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

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

The Project will meet or exceed the required 0.2 GAR for the D-8 zone. It will be designed to meet the threshold for designation as LEED Gold pursuant to the LEED For Home V4 Multifamily Mid-Rise standards. A preliminary LEED Scorecard is included at Sheet 53 of the Architectural Drawings. The Applicant intends to pursue certification for the Project at the LEED Gold level.

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

The Project will have limited visibility from the Smithsonian Institution's original building as demonstrated in the photo simulation included at Sheet 22 of the Architectural Drawings. Notwithstanding, the Project's proximity to the Smithsonian Castle and the National Mall was taken into consideration when the proposed penthouse was being designed. As discussed above, the northern volume of the building has a fairly modest height in response to the Cotton Annex. Behind this initial volume, the height of the building increases along the east and south sides of the site. These taller volumes are the only portions of the building that contain a penthouse.

The design of the penthouse is integrated with the overall design of the building. The penthouse will meet all required setbacks, thus reducing its visibility from the National Mall. In addition, a simple horizontal detail between the habitable and mechanical portions of the penthouse will reduce the massing and stepping effect of the penthouse. To the extent the proposed penthouse is even visible, it will not compete with the architectural features of the Smithsonian Institution's original building.

3. Section 581.3

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

Not applicable.

4. Section 581.4

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

As demonstrated herein, the Applicant complies with all applicable regulations. Bonus density is not available to the Project given its residential nature.

5. Section 581.5

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

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

VI. ADDITIONAL ZONING RELIEF REQUESTED

The Applicant is seeking two variances pursuant to Subtitle X § 1000.1 of the Zoning Regulations: (i) for relief from the limitation on density within the footprint of a historic building under Subtitle I § 200.3; and (ii) for relief from the court dimensional requirements of Subtitle I § 207.1. Under D.C. Code §6-641.07(g)(3) and 11 DCMR X §1000.1, the Board of Zoning Adjustment is authorized to grant an area variance where it finds that three conditions exist:

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

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

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

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

The requested variances from the minimum open court requirements and limitation on density within the footprint of a historic resource are directly related to exceptional conditions that are unique to the Property. First, the Property is bordered on all sides by public streets or land that behaves as a public right of way. The lot is configured with an odd chamfer at the northeast corner due to the presence of the existing 12th Street expressway. This odd angle of the lot line is a result of a 1969 highway dedication that condemned a small corner of the Property to accommodate construction of the expressway. Prior to the condemnation, this particular corner of the Property formed a 90 degree angle, and, absent other subsurface constraints, would have permitted the proposed building to be constructed to the lot line, thus eliminating the open court. The requested relief is also due to the unique presence of the WMATA tunnel that runs below the northeast portion of the Property which also affects the design of the northeast portion of the project. The historic Cotton Annex building creates another exceptional condition of the Property. The Cotton Annex is a designated historic landmark that, with the exception of a noncontributing egress stair on the south side of the building, must be preserved and rehabilitated as part of the Project. While the presence of the historic landmark on the Property is an exceptional circumstance unto itself, the one-story transformer vault located at the southwest corner of the historic structure is a particularly unique aspect of the structure that contributes to the Applicant's need for variance relief. Finally, the Property's location within an area subject to review by the CFA pursuant to the Shipstead-Luce Act, when considered in connection with the confluence of other unique circumstances described above, further contributes to the exceptional nature of the Property.

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

The exceptional conditions described above result in a practical difficulty to the Applicant should the Zoning Regulations relating to court dimensions and density relating to historic

buildings be strictly applied. To meet the standard for practical difficulty, “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A. 2d 535, 542 (D.C. 1972). In area variances, such as those requested in this case, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1365 (D.C. 1992), citing *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). The Board “may consider whether the variance sought is de minimis in nature and whether for that reason a correspondingly lesser burden of proof” is appropriate. *Gilmartin*, 579 A.2d at 1171, citing *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A. 2d 326, 327 (D.C. 1976). Such is the case in this application. Finally, it is well settled that the BZA may consider “... a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’...” *Id.* Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible.

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

The strict application of the open court requirements would create a practical difficulty for the Applicant that is directly a result of the confluence of the unique shape and public frontage of the Property, the presence of the landmark building, the subsurface constraints imposed by the WMATA tunnel, and the CFA review process.

As described above, the Applicant has designed the new addition to the landmark building in a C-shape in order to provide a meaningful interior courtyard buffer and thereby preserve the historic volume of the Cotton Annex. This effort requires the new construction to be pushed toward the east and southern borders of the Property. Parking and loading access is also

discouraged along 12th Street, SW, and unavailable from either the south and east frontages of the Property. The Applicant has therefore located both loading and parking access to a single curb cut along the northeastern portion of the Property. This access point, whose location is further affected by the chamfered nature of the Property boundary at its northeast corner, is atop the WMATA tunnel and easement area and affects the parking access ramp trajectory as well as the layout of the adjacent ground floor uses in this northeast corner of the Project. Finally, the Project has undergone extensive design review by CFA, which has placed heavy focus on the treatment of the north elevation of the Project in order to establish an appropriate relationship of this new façade to the historic building, in the form, height, fenestration, materiality, and most relevant to this discussion, rectilinear massing.

These confluent factors leave the Applicant with three choices: (1) construct the building wall along the chamfered portion of the lot boundary, thereby removing the court entirely but also frustrating the design direction and concept approval provided by CFA, including the preference for strong rectilinear massing; (2) provide a compliant court, which would need to be approximately three times the size of the proposed open court, which in turn would require a significant loss of ground floor space and extraordinarily complicate the Applicant's efforts to provide loading access from the C Street Easement Area (See Sheet 3 of Architectural Drawings); or (3) request variance relief to provide a court that does not technically comply with the dimensional requirements yet behaves more like a court niche than a traditional court and will have no detrimental effect, as described below.

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

Given the residential nature of the Project, overall building density is not the focus of the variance request. Rather, it is the strict application of the density limitation pertaining to historic resource footprints that creates a significant practical difficulty for the Applicant.

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

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

As demonstrated in the Architectural Drawings, the Project does not propose to add any building density atop the landmark building envelope. In fact, as discussed above, the focus of the Project is to relieve the landmark of additional density pressure. The sticking point for the Applicant is the one-story appendage that extends to the south of the Annex and once served as a transformer vault. Because this appendage technically is considered part of the historic footprint, any construction that would be located atop or above this element will necessarily add to the

density on the historic footprint, which already exceeds 6.0 FAR. The Applicant is proposing to add approximately 4,383 square feet of gross floor area, which represents a minor increase in building density on the historic footprint from 6.45 FAR to 6.78 FAR.

The strict application of the density limitation within the historic footprint would result in the Applicant not being able to connect the landmark building to new construction on the south side due to the existing one-story transformer. As shown on Sheets 6 and 7 of the Architectural Drawings, had later phases of the original Cotton Annex been completed as designed, the area above the transformer vault would have contained office space and a corridor to connect to the dead end corridor that exists at the south end of the existing building. As shown in the Architectural Drawings, the general footprint of the proposed building is similar to the original design of the Cotton Annex. The building generally has a rectangular footprint that contains a double-loaded corridor surrounding a central closed court up to a certain height. As required for historic preservation purposes, the proposed design retains the original corridor configuration in the existing Cotton Annex, and extends this configuration through the new construction. An inability to connect to the existing corridors at the south end of the building would result in a loss of dwelling units as the Applicant would be required to connect to the existing building in another way that does not go above the existing transformer. This would also unnecessarily require inefficient circulation improvements (additional corridors, means of egress, elevators, etc.) to meet building code requirements. It would also again frustrate the design direction received from the CFA and HPO in terms of establishing the street wall and compatible relationship between the façade of the landmark building and the new construction to its south along 12th Street.

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

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

The variance from the density limitation within the historic footprint of the Cotton Annex will not be detrimental to the public good. Indeed, impacts to the public good will be beneficial as the variance relief will facilitate the redevelopment/rehabilitation of the Cotton Annex into a vibrant, residential building in an area of the city in dire need of renewed vitality through a wider mix of uses. This density limitation variance will also not substantially impair the purpose, intent, and integrity of the Zoning Regulations. This regulation is intended relieve development pressure from historic resource and protect them from being overbuilt. As is clearly demonstrated in the Architectural Drawings, the additional density proposed within the existing building footprint is extremely minor, and only within the portion of the footprint containing the one-story transformer vault. In fact, the portion of the proposed design that is within the footprint of the existing transformer fault is similar to what was originally proposed above the transformer vault in the original design for the Cotton Annex.

VII. FLEXIBILITY REQUESTED

The Applicant has attempted provide detailed and accurate depictions of its plans for the Project as shown in the Architectural Drawings, understanding that Project is in concept design and will be further refined on the path to permit approval. To that end, the Applicant requests flexibility with respect to certain elements of the design and asks that, if the Application is approved by the Zoning Commission, the approval order contain the following flexibility consistent with the Zoning Commission's authority:

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 buildings 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;

Exterior Materials – Color: To vary the final selection of the colors of the exterior building materials based on availability at the time of construction and/or to respond to further recommendations by the U.S. Commission of Fine Arts or D.C. Historic Preservation Review Board/Office, provided such colors are within the color ranges shown on the plans approved by the order;

Inclusionary Zoning Units: To vary the number and location of Inclusionary Zoning units to accommodate refinements to the total residential square footage and/or number of dwelling units permitted under the flexibility granted by the order, and to ensure compliance with applicable Inclusionary Zoning development standards;

Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, mechanical rooms, and elevators, provided that the variations do not change the exterior configuration of the buildings as shown on the plans approved by the order;

Landscape: To vary the final selection of landscaping materials based on availability at the time of construction;

Number of Units: To provide a range in the total square footage of residential dwelling units and the approved number of residential dwelling units of plus or minus 5 percent;

Parking Layout: To make refinements to the approved parking configuration, including layout and number of parking spaces, provided the number of spaces is not reduced below the minimum number of spaces required under Subtitle C of the Zoning Regulations;

Retail Frontage: To make minor refinements to retail frontages, including the location and design of entrances, show windows, and size of retail units, in accordance with the needs of the retail tenants;

Signage: To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage shown on the plans approved by the Order;

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;

Sustainable Features: To vary the approved sustainable features of the project, provided the total number of LEED points achieved by the project does not decrease below the minimum required for the LEED standard required under the Order;

Use Categories: To vary the types of uses within the areas designated as “retail”-in the plans approved by the Order to include the uses permitted under I-302.1 of the Zoning Regulations.

VIII. COMMUNITY OUTREACH

The Applicant has engaged in discussions with Advisory Neighborhood Commission (“ANC”) 6D regarding the Project and this application over the course of the past several months and continues to discuss the Project with the ANC.

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

Project and noted appreciation for color changes the Applicant made to the upper portion of the building.

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

The Applicant presented to the ANC 6D February 2021 business meeting, with the ANC responding generally favorably to the Project’s design but requested that the Applicant further explore increasing the amount of Inclusionary Zoning units within the Project over and above the amount required pursuant to the Inclusionary Zoning Regulations. The Applicant noted for the ANC that Inclusionary Zoning is not a component of any of the special exception or variance requests approval and intends to comply with the Zoning Regulations. The ANC invited the Applicant to continue dialogue and to return to the ANC’s March 2021 business meeting, which the Applicant intends to do.

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

IX. WITNESSES

At the public hearing for this application, the Applicant intends to present testimony in support of the special exception approval and variance requests, including from experts in architecture, urban planning and transportation analysis. Witness testimony outlines and resumes for expert witnesses were submitted as part of the application and are included at Exhibit 3 of the record in this case.

X. ATTACHMENTS

- Updated Architectural Drawings;
- Commission of Fine Arts Concept Approval Letter
- HPO Confirmation Letter
- Updated Building Plat;
- Gorove/Slade CTR Addendum – Turning Radius

XI. CONCLUSION

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

Respectfully Submitted,

HOLLAND & KNIGHT LLP



Dennis R. Hughes

Attachments