

*Applicant's Proposed Findings of Fact/Conclusions of Law/Decision  
April 1, 2021*

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ORDER NO. 20-34**

**D-8 Special Exception and Variances  
Jemal's Cotton Annex L.L.C. @ Square 326, Lot 806**

**HEARING DATE:** March 18, 2021

**DECISION DATE:** March 18, 2021

**DECISION AND ORDER**

Jemal's Cotton Annex L.L.C. (the "Applicant") filed an application with the Zoning Commission for special exception approval, pursuant to Subtitle I § 581 of the District of Columbia Zoning Regulations, 11 DCMR (September, 2016), as amended ("DCMR" or "Zoning Regulations"), for new construction and rehabilitation of existing improvements on property located in the D-8 zone. The application included requests for 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. For the reasons stated below, the Commission voted to approve the application.

**PRELIMINARY MATTERS**

**Self-Certification.** The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6. (Exhibit 1B). In granting the certified relief, the Commission made no finding that the relief is either necessary or sufficient.

**Application.** On December 24, 2020, the Applicant filed an application for special exception review and approval, pursuant to Subtitle I § 581 of the District of Columbia Zoning Regulations, for new construction and rehabilitation of existing improvements on property located in the D-8 zone, along with area variances, pursuant to 11-I DCMR § 207.1 for court dimensional requirements, and 11-I DCMR § 200.3 related to increasing building density within the footprint of a historic resource in the Downtown ("D") zones. The application package included, among others: a set of architectural drawings; a preliminary statement summarizing the application's compliance with the applicable burdens of proof of the special exception and area variances requested; resumes for its witnesses to be proffered as experts in architecture, planning and transportation analysis; and witness testimony outlines (Exhibit 3).

**Property and Zoning Designation.** The property that is the subject of the application is located at 300 12<sup>th</sup> Street, SW (Square 326, Lot 806) (the "Property") and is within the D-8 zone. The Property is bounded by 12<sup>th</sup> Street, SW, to the west, D Street, SW, to the south, the closed dead-end portion of C Street, SW, to the north (now private property), and the 12<sup>th</sup> Street Expressway to the east (Exhibit 3B).

**Hearing Notice.** A notice of public hearing was published in the D.C. Register on January 8, 2021 (Exhibits 4 and 5). The hearing notice was forwarded to Advisory Neighborhood Commission (“ANC”) 6D, the ANC in which the Property is located, on January 13, 2021 (Exhibit 6). Notice of the public hearing for the application was properly provided pursuant to Subtitle Z § 402 (Exhibits 7, 8, and 15).

**Applicant’s Prehearing Submissions.** Pursuant to Subtitle Z § 401.8, on February 16, 2021, the Applicant filed a comprehensive transportation review (“CTR”) prepared by Gorove/Slade in support of the application (Exhibit 9). The Applicant filed a prehearing submission in support of the application on February 26, 2021 (the “Prehearing Submission”)(Exhibit 11). The Prehearing Submission included an expanded statement demonstrating the application's compliance with the applicable criteria pertaining to the D-8 special exception as set forth in Subtitle I § 581 and justification for the requested area variance relief regarding the court dimensional requirement of Subtitle I § 207.1 and building density limitation for historic resources within the D-zones as set forth in Subtitle I § 200.3. The Prehearing Submission included updated architectural drawings (the “Final Architectural Drawings”) at Exhibit 11A, updated plat at Exhibit 11D, and truck turning diagrams at Exhibit 11E. Also contained in the Prehearing Submission was a letter to the Applicant from the United States Commission of Fine Arts (“CFA”) (Exhibit 11B) confirming concept approval of the Applicant’s rehabilitation project design as well as a letter from the District of Columbia State Historic Preservation Office (“DCSHPO”) granting approval by that office of the scope of the rehabilitation project consistent with preservation-related covenants on the Property (Exhibit 11C).

**Agency Report: OP.** The D.C. Office of Planning (“OP”) submitted a report on March 5, 2021, recommending approval of the application (Exhibit 12) followed by an amended report on March 11, 2021, which corrected certain dimensional references in the original report (Exhibit 12A). OP testified at the public hearing in support of the application.

**Agency Report: DDOT.** The D.C. Department of Transportation (“DDOT”) submitted a report on March 8, 2021, and testified at the public hearing, indicating no objection to the application, with conditions and request for future coordination (Exhibit 13). The Applicant responded to the DDOT report in a submission on March 12, 2021 (Exhibit 16). DDOT testified at the public hearing in support of the application.

**ANC Recommendation.** ANC 6D submitted a letter to the Commission on March 11, 2021, wherein the ANC reported that at its duly-noticed meeting on March 8, 2021, ANC 6D voted 5-1-1 to recommend that the Commission approve the requested D-8 special exception and area variance relief, with conditions. ANC 6D Chairperson Edward Daniels participated at the public hearing on behalf of the ANC.

**Public Hearing.** The Commission held a public hearing on the application on March 18, 2021. Parties to the case included the Applicant and ANC 6D, the ANC within which the Property is located. Testimony and letters were also received by persons and organizations in support and opposition to the application.

**Applicant's Presentation.** Witnesses appearing at the hearing on behalf of the Applicant included: Paul Millstein and Drew Turner, both representing the Applicant; Jack Boarman of BKV Group, project architect; Shane Dettman, Director of Planning at Holland & Knight LLP; and Erwin Andres of Gorove/Slade. Mr. Boarman, Mr. Dettman and Mr. Andres were recognized by the Commission as experts in their respective fields of architecture, urban planning, and transportation engineering.

**Persons and Organizations in Support.** The Commission received testimony in support of the application from Ms. Kathy Henderson on behalf of 5D Court Watch and Mr. Alex Padro of Shaw Main Streets. These organizations spoke in support of the Applicant and Douglas Development Corporation related to past rehabilitation and community improvement projects in the District of Columbia and the benefits of the Project.

**Persons and Organizations in Opposition.** The Commission received testimony in opposition to the application from Mr. Coy McKinney and Mrs. Pamela McKinney. Mr. and Mrs. McKinney also submitted testimony with exhibits to the record. The Commission also received letters and statements in opposition to the application from Jennifer Ho, Kelsey Evans, Jen Pearson, Adom Cooper, Judith Bauer, Miranda Chien-Hale, Desiree Halpern, Laura Heller, Kelly Gallagher, Melissa Silverman, Paul Severance and Benjamin Ketchum and materials submitted by SW DC Action. At the beginning of the public hearing, the Commission reminded the audience that the application would be reviewed by the Commission pursuant to specific criteria established in the Zoning Regulations, and that the application was not a planned unit development or other type of application involving the balancing of development flexibility with community benefits and that any comments made that were unrelated to the specific criteria being reviewed by the Commission would be deemed outside the scope of review.

**Decision.** At the conclusion of the March 18, 2021, public hearing, the Commission took final action by a vote of 5-0-0 to approve the application, including the requested area variances. The Commission determined that the application satisfies all applicable criteria for projects in the D-8 District, pursuant to Subtitle I § 581, and meets the requisite burden of proof related to the area variance requests pertaining to court dimensions and building density.

## **FINDINGS OF FACT**

### **Property Overview**

1. The Property is bounded by 12<sup>th</sup> Street, SW, to the west, D Street, SW, to the south, and the 12<sup>th</sup> 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. This access easement follows the former C Street, SW right-of-way, which was formally closed in 1965 in connection with the construction of the 12<sup>th</sup> Street Expressway. The Applicant holds a non-exclusive easement for ingress and egress purposes across the area of the access easement.

2. 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 12<sup>th</sup> Street Expressway.
3. Occupying the west side of the Property is the historic U.S. Department of Agriculture's 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.
4. 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 and connecting to the Central Heating Plant located across 12<sup>th</sup> Street, SW, which is operated by the GSA and services various federal buildings in the vicinity.

### **Project Overview**

5. The Applicant proposes to 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. The Applicant provided architectural drawings detailing the design, massing, material and operation of the Project in the Final Architectural Drawings submitted at Exhibit 11A.
6. The Applicant has developed a scope of work in coordination with DCSHPO to preserve, restore, and rehabilitate the vast majority of the landmark building 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 12<sup>th</sup> 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.
7. The proposed building addition also has been 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, as measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof

excluding parapets not exceeding four feet in height. Similar height differentiation occurs 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 10<sup>th</sup> 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.

8. The Project has been designed “in the round” to address the Property’s multiple public frontages 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.
9. 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 vehicular parking spaces, 147 bicycle parking spaces 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.
10. Given the Property’s location, it is subject to review by the 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 CFA 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 CFA granted concept approval for the Project at its January meeting.
11. The Applicant has also worked extensively with the DCSHPO, who 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.
12. Residential density in the D-8 zone is subject to the Inclusionary Zoning requirements and bonuses of Subtitle C, Chapter 10, pursuant to 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, 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. Of this amount, approximately 1,004 square feet of gross floor area required Inclusionary Zoning set aside generated by the penthouse habitable space will be provided to 50 percent Median Family Income (“MFI”) households within the Project. The remaining amount of Inclusionary Zoning set aside within the Project – approximately 36,277 square feet of gross floor area - will be provided consistent with applicable regulations (e.g. 60 percent MFI for rental units and 80 percent MFI for for-sale units).

13. As shown in the Final Architectural Drawings, the materials palette for the building includes multiple colors of brick, metal panel, and aluminum and glazed windows.
14. The Project will incorporate a number of elements to enhance its sustainability, and the Applicant represented that it expects the finished building will be certified at the LEED For Home V4 Multifamily Mid-Rise standards. To that end, included in the Final Architectural Drawings, the Applicant submitted a LEED checklist identifying those elements and features the Applicant may pursue in satisfaction of its sustainability commitment. The building design also satisfies the Green Area Ratio ("GAR") requirements of 11-C DCMR Chapter 6.

#### **Description of the Surrounding Area and Zoning Classification**

15. The Property is located approximately two blocks south of the National Mall and is primarily surrounded by federal institutional buildings, including the U.S. Department of Agriculture, the U.S. Department of Energy, U.S. Postal Service, Immigration and Customs Enforcement, the Federal Communications Commission, and Social Security. Also nearby the Property is the Mandarin Oriental hotel and private office buildings within the Portals development, the United States Holocaust Memorial Museum, and several Smithsonian and other museums located along Independence Avenue and the National Mall. The Smithsonian Metrorail station is located approximately one block to the north of the Property, and the L’Enfant Metrorail station is located approximately three blocks to the east of the Property. The Washington Monument is located to the northwest.
16. The Property is located in the D-8 zone. Pursuant to 11-I DCMR § 575.1, 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. Residential, office, retail and service uses are permitted as a matter-of-right in the D-8 zone.
17. 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, as set forth in 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, pursuant to 11-I DCMR § 576.4.

18. Within the D-zones, 11-I DCMR § 200.3 provides that a historic landmark or contributing building or structure in a historic district having an existing density of more than 6.0 FAR on the portion of a lot within the historic structure's footprint 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.
19. The maximum permitted building height in the D-8 zone is 130 feet for property abutting a street with a right-of-way width that is greater than or equal to 110 feet, pursuant to 11-I DCMR § 577.1. The Zoning Administrator confirmed to the Applicant that the Property fronts on three streets (D Street, 12<sup>th</sup> Street, and the 12<sup>th</sup> Street Expressway), and the width of the 12<sup>th</sup> Street Expressway can be used to (i) determine the maximum permitted height of the building on the Property, and (ii) establish the building height measuring point. In this location, the width of the 12<sup>th</sup> Street Expressway is 111.42 feet. The maximum permitted penthouse height is 20 feet in one story plus a mezzanine, with a second story permitted for penthouse mechanical space, pursuant to 11-I DCMR § 577.4.
20. Unless otherwise limited by regulations governing courts, side or rear yards, front setback or build-to lines, easements, or historic preservation, each building on a lot within the D-8 zone may occupy 100% of its lot, pursuant to 11-I DCMR § 202.1.
21. A rear yard is not required for a lot fronting on three or more streets in the D-8 zone per 11-I DCMR § 205.2(b). A side yard is not required for historic landmarks per 11-I DCMR § 206.3. If provided, an open court must have a minimum width of 4 inches per foot of height of court (ten feet minimum); a closed court must have a minimum width of 4 inches per foot of height of court (15 feet minimum); and a closed court must have a minimum area of twice the square of the required width of court (350 square feet minimum), pursuant to 11-I DCMR § 207.1. A minimum Green Area Ratio ("GAR") of 0.20 is required in the D-8 zone per 11-I DCMR § 208.1.
22. Vehicle parking spaces are not required in D-zones, with certain limited exceptions not applicable to the Property, pursuant to 11-I DCMR § 212.1. Bicycle parking spaces are required as follows: (i) residential apartment use requires one long term space for every three dwelling units and one short-term space for every 20 dwelling units; and (ii) retail use requires one long term space for every 10,000 square feet and one short-term space for every 3,500 square feet, pursuant to 11-C DCMR § 802.1. Additions to historic resources are required to provide additional bicycle parking spaces only for the addition's gross floor area and only when the addition results in at least a 50% increase in gross floor area beyond the gross floor area existing on the effective date of the Zoning Regulations per 11-C DCMR § 802.6.
23. Loading facilities are required for residential use as follows: (i) residential use, more than 50 dwelling units requires one loading berth at 30 feet deep and one service/delivery space

at 20 feet deep per 11-C DCMR § 901.1. When two or more uses in different use categories share a building or structure, the building or structure is only required to provide enough berths and spaces to meet the requirement for the use category with the highest requirement, and not the combination of requirements for all use categories provided that all uses that require loading have access to the loading area per 11-C DCMR § 902.2. An addition to a historic resource is required to provide additional loading berths, loading platforms, and service/delivery spaces only for the addition's gross floor area and only when the addition results in at least a 50% increase in gross floor area beyond the gross floor area existing on the effective date of the Zoning Regulations, pursuant to 11-C DCMR § 901.7.

### **D-8 Special Exception Requirement**

24. Section 581.2 of 11-I DCMR provides that 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 on the D-8 zone, 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, NW, shall be referred to the National Capital Planning Commission for review and comment. The Zoning Commission finds that the Project meets the requirements of §581.2.

### **Variance Relief from Court Dimension and Building Density Requirements**

25. 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, pursuant to 11-I DCMR § 581.5.
26. The Applicant is seeking variances, pursuant to 11-X DCMR § 1000.1 for relief from the limitation on density within the footprint of a historic building under 11-I DCMR § 200.3, and relief from the court dimensional requirements of 11-I DCMR § 207.1.

### **Office of Planning Report**

27. By report dated March 5, 2021, and marked as Exhibit 12 of the record (and supplemental reported dated March 11, 2011 at Exhibit 12A), OP recommended approval of the application. In its report, OP noted that the application successfully addresses the special exception criteria for D-8 zoned properties. OP also noted its support for the requested variances related to court dimensional requirements and building density limitations applicable to historic resources and confirmed the application's compliance with the respective burdens of proof. OP indicated no objection to the Applicant's requested areas of design and use flexibility.

## **DDOT Report**

28. By report dated March 8, 2021 and marked as Exhibit 13 of the record, DDOT provided its analysis regarding the parking, loading, trip generation and vehicle turning impacts of the Project on the District's transportation network. DDOT requires applicants requesting an action from the Zoning Commission complete a Comprehensive Transportation Review ("CTR") in order to determine the action's impact on the overall transportation network. Accordingly, an Applicant is expected to show the existing conditions for each transportation mode affected, the proposed impact on the respective network, and any proposed mitigations, along with the effects of the mitigations on other travel modes. The Applicant and DDOT coordinated on an agreed-upon scope for the CTR that is consistent with the scale of the action. DDOT confirmed that the Applicant utilized sound methodology and assumptions to perform the traffic impact analysis and CTR study.
29. DDOT requires the Applicant to mitigate the impacts of the development in order to positively contribute to the District's transportation network. The mitigations must sufficiently diminish the action's vehicle impact and promote non-auto travel modes. This can be done through Transportation Demand Management ("TDM"), physical improvements, operations, and performance monitoring. DDOT preference is to mitigate vehicle traffic impacts first through establishing an optimal site design and operations to support efficient site circulation. When these efforts alone cannot properly mitigate an action's impact, a reduction in parking and implementation of TDM measures may be necessary to manage travel behavior to minimize impact. Only when these other options are exhausted will DDOT consider capacity-increasing changes to the transportation network because such changes often have detrimental impacts on non-auto travel and are often contrary to the District's multi-modal transportation goals.
30. The Applicant proposed a series of mitigations, including TDM strategies that DDOT recommended needed to be supplemented. The Applicant agreed to DDOT's recommended additional TDM measures with the exception of improvements to the crosswalks at the intersection of 13<sup>th</sup> and C Streets, SW, to which DDOT agreed would not be necessary. The agreed-upon TDM measures were enumerated in the Applicant's submission to the record at Exhibit 16 and are incorporated as conditions to the Commission's approval herein.

## **ANC 6D Report**

31. Advisory Neighborhood Commission 6D submitted a letter to the record on March 10, 2021, included at Exhibit 14 of the record, informing the Zoning Commission that at its regularly scheduled March 8 public meeting, the ANC, with a quorum being present, voted 5-1-1 to support the application, with the following conditions: (a) the Applicant will design the Project with no discernable difference between the interior finishes of the Inclusionary Zoning units and market rate units. The Applicant will fully comply with all Inclusionary Zoning requirements including those involving the unit types and distribution in the building, similar to what is provided in the Final Architectural Drawings; (b) the

Applicant will join the Southwest Business Improvement District as a member no later than issuance of the Certificate of Occupancy; and C) the Applicant will provide funding to the Southwest Community Foundation in the amount of \$100,000 to the SW Community Foundation. The Applicant confirmed its agreement to the ANC's conditions. The Zoning Commission shall only address those conditions that are directly related to the Zoning Regulations and the Commission's jurisdiction.

### **CONCLUSIONS OF LAW**

The Applicant seeks special exception approval under 11-I DCMR § 581 to allow the proposed rehabilitation and new construction residential project. Pursuant to 11-I DCMR § 581, the Commission's special exception review shall be undertaken in accordance with the provisions of 11-X DCMR Chapter 9 and 11-I DCMR §§ 581.2 through 581.5.

Pursuant to 11-X DCMR §901.2, the Board of Zoning Adjustment (and here by extension, the Zoning Commission) is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Commission, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions.

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 Commission 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)).

### **The Project Meets the Requirements of 11-X DCMR § 901.2**

- (a) *The special exception approval will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*

The Commission concludes that the Project will fulfill the purposes and policies of the D zones. One of the primary purposes of the 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. 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 Commission concludes that 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 an estimated 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. 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. It 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) The approval of the special exception will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and*

The Commission concludes that 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 below the 130-foot maximum height permitted under the Zoning Regulations. In addition, the 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. To the extent there is any potential for impacts to light and air to the future development immediately to the north of the Property, 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 the Southwest 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. The proposed retail/service/eating and drinking use also will provide an additional amenity to residents, workers, and visitors to the area.

- (c) *The special exception approval will meet such special conditions as may be specified in this title.*

The Commission concludes that the Applicant satisfies all applicable conditions under Subtitle I § 581, as detailed below.

### **The Project Meets the Requirements of 11-I DCMR § 581**

*Section 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.*

The Commission concludes that the special exception application is appropriately presented for review by the Commission and acknowledges that the Project has been reviewed and granted concept approval by the CFA.

*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”).*

In addition to reestablishing Maryland Avenue as a grand boulevard as envisioned in the L’Enfant Plan, the Maryland Plan has a primary focus the creation of a more lively and sustainable land use mix in the area of Southwest between the National Mall and the SE/SW freeway. 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 Commission concludes that the Project will help achieve the stated objectives of the Maryland Plan, particularly with regard to land use and adding 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 a landscaped courtyard at 12<sup>th</sup> 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 12<sup>th</sup> and D Streets, SW.

The Maryland Plan stipulates a minimum of 1,000 new residential dwelling units are necessary to establish the necessary critical mass to attract meaningful retail and targets underutilized sites as ideal for new residential development, specifically identifying the Property as a prime candidate. Consistent with the above-stated goal, the Project will contain approximately 453,458 square feet (approximately 610 dwelling units) of residential development.

The Project also will 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 Project will 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 Project'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 12<sup>th</sup> Street, SW, will be reconstructed to District standards, including new paving, tree boxes, and short-term bicycle parking. The existing curb cut along 12<sup>th</sup> 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 building's main entrance at C Street, SW. 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. The height and mass of the Project along C Street and at the corner of 12<sup>th</sup> 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 Project reaches a maximum height of approximately 118'-8". The Project also has 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;*

The Commission concludes that the proposed height, massing, and siting of the Project respects vistas to the U.S. Capitol, Washington Monument, and the Smithsonian Institution's original building. The Property is not located along any vistas that directly align with the U.S. Capitol, Washington Monument, or the Smithsonian Castle. 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.

*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.;*

The Commission concludes that improved connectivity for pedestrians and vehicles is provided on and around the Property through the reconstruction of the streetscape along 12<sup>th</sup> 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 12<sup>th</sup> Street that results from the 10-foot setback provided to align with the existing Cotton Annex building. Improved connectivity for pedestrians will also be achieved as a result of the closure of the existing curb cut located along the Property's 12<sup>th</sup> Street, SW, frontage.

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

The existing curb cut along 12<sup>th</sup> Street, SW, will be abandoned as the Applicant has designed the Project so as to combine the parking and loading functions into a single access point from the C Street Easement Area, away from the busier 12<sup>th</sup> Street frontage. In addition, "front-in-front-out" loading access will be provided, further minimizing potential for vehicular and pedestrian conflicts.

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 at Exhibit 16 of the Record. The proposed TDM measures include, among others, 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. With these TDM measures, the Commission concludes that the Project will satisfactorily minimize conflicts between vehicles and pedestrians.

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

The Project's design treats all four sides of the building as primary facades. As shown in the Final 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 landmark and to the surrounding construction. Further aesthetic interest and scale are provided through the addition of oriel windows and canopy projections. For these reasons, the Commission concludes that this criterion has been satisfied.

- 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 Final 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. For this reason, the Commission concludes that this criterion has been satisfied.

- 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 has been included as part of the Final Architectural Drawings. The Applicant has confirmed that it will pursue certification for the Project at the LEED Gold level. For these reasons, the Commission concludes that this criterion has been satisfied.

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

The Project will have limited visibility from the Smithsonian Institution's original building as demonstrated in the photo simulation included as part of the Final Architectural Drawings. 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. For these reasons, the Commission concludes that this criterion has been satisfied.

*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)]:*

The Commission concludes that this criterion is not applicable to the Property as the Project does include an area restricted by 11-I DCMR §575.2.

*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.

The Commission concludes that this criterion is not applicable to the Project as bonus density is not available to the Project given its residential nature.

*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 Commission received testimony from the Applicant that, 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 court dimensional 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. Pursuant to this criterion, the Commission is authorized to hear and decide these requests for variance relief.

### **Variance Requests from the Court Dimensional Requirement and Building Density Limit**

#### **Exceptional Condition:**

The Applicant is seeking two variances pursuant to 11-X DCMR § 1000.1: (i) for relief from the court dimensional requirements of 11-I DCMR § 207.1; and (ii) for relief from the limitation on density within the footprint of a historic building under 11-I DCMR § 200.3. 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) a particular piece of property is affected by some exceptional situation or condition; (2) without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or substantial impairment of the zone plan. The Commission, pursuant to its authority provided in 11-I DCMR §581.5, concludes that variance relief is appropriate in this application.

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 12<sup>th</sup> 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.

Practical Difficulty:

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).

i. Court Dimensional Requirements:

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. 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 12<sup>th</sup> 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; 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.

#### ii. Building Density Limitations.

While the maximum permitted density for a residential 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, there remains a separate limitation on density applicable to designated historic resources in the D zones. Where 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, as is the case with the Property, the Zoning Regulations provide that no increase the existing density is permitted within the historic structure's footprint. *See* 11-I DCMR § 200.3.

The Project does not propose to add any building density atop the landmark building envelope. Rather, 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 in the Final 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 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 to meet building code requirements. It would also again frustrate the design direction received from the CFA and DCSHPO 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 12<sup>th</sup> Street.

No Substantial Detriment:

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 12<sup>th</sup> 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 12<sup>th</sup> 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. Impacts to the public good will be beneficial as the variance relief will facilitate the rehabilitation of the Cotton Annex into a vibrant residential building in an area of the District 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 Final 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.

For all these reasons, the Commission concludes that variance relief is appropriate.

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give "great weight" to the issues and concerns of the affected ANC. ANC 6D voted 5-1-1 in support of the proposed project and submitted its report supporting the Project, with conditions, on March 8, 2021.

The Commission is required under D.C. Official Code § 6-623.04 to give great weight to OP recommendations. The Commission concurs with OP's recommendation that the special exception approval and variance relief should be granted.

Based upon the record before the Commission, including witness testimony, the reports submitted by the Office of Planning, DDOT, and ANC 6D, and the Applicant's submissions, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under the Zoning Regulations.

The Commission also acknowledges the letters and testimony submitted in opposition to the application. The points contained in these materials consistently raised three criticisms: (1) the application does not provide a sufficient amount of dedicated affordable housing and must provide significantly more affordable housing and at significantly lower rents; (2) personal claims directed toward the applicant; and (3) criticisms of ANC 6D and individual commissioners within the ANC and claims of inappropriate behavior and conflicts of interest by the ANC. The Commission also notes the repeated references among the testimony and letters suggesting that the application fails to fulfill the policy goals and directives of the Southwest Neighborhood Small Area Plan, especially its call for the Southwest Neighborhood Planning Area to “remain and exemplary model of equity and inclusion”.

The Commission clarified at the beginning of the public hearing that the application was in the nature of a special exception and variance application, to be reviewed based upon specific criteria as established in the Zoning Regulations, and that upon demonstration of compliance with said criteria, the application would be approved. The Commission reminded and contrasted the present application with other sorts of applications reviewed by the Commission, such as planned unit development applications, where a balancing of development flexibility and project amenities and community benefits was appropriate.

The Commission notes that the issues raised in the letters of opposition and testimony in opposition are not directly germane to the nature of the application and do not raise substantive questions or concerns with regard to the application’s compliance with the relevant burdens of proof under the Zoning Regulations. Of the items that were raised in opposition, the Commission takes note of the comments and concerns addressing affordable housing issues generally and noted at the hearing a number of initiatives the Commission and OP are undertaking to review the Inclusionary Zoning mechanism within the Zoning Regulations. That said, the Commission also notes that the Property is subject to an Inclusionary Zoning set aside as established in the Zoning Regulations and the Commission has previously determined that the Inclusionary Zoning provisions within the Zoning Regulations provide the appropriate mechanism to mitigate the effects of gentrification in the District of Columbia. The Applicant has demonstrated that it will comply with the applicable regulations pertaining to Inclusionary Zoning. The Commission also notes that the Property is not located within the planning area boundaries of the Southwest Neighborhood Plan as was represented by many of the letters and testimony in opposition. Rather, the Property is located within the boundaries of the Maryland Avenue Plan planning area and, as has been addressed above, the Commission concludes that the Project complies with the policies and goals of the applicable plan.

The Commission also notes the complaints raised by the letters and testimony in opposition with respect to ANC 6D and the Applicant and finds they are without merit. The Commission respects the tireless and selfless work undertaken by ANC 6D and is unpersuaded that the ANC undertook any actions that are not appropriate in this matter. The Zoning Commission likewise disregards the negative personal attacks claimed against the Applicant and its related entities and finds said comments to be irrelevant to the Commission’s review of the application.

## **DECISION**

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application consistent with this Order. This approval is subject to the following guidelines, standards, and conditions:

1. The approval of the proposed development shall apply to Lot 806 in Square 326, and any successor lot(s) incorporating Lot 806.
2. The Project shall be constructed in accordance with the Final Architectural Drawings, dated February 25, 2021, as modified by the guidelines, conditions, and standards below (Exhibit 11A).
3. The Project will be designed to meet the threshold for designation as LEED Gold pursuant to the LEED For Home V4 Multifamily Mid-Rise standards. The Applicant has confirmed that it will pursue certification for the Project at the LEED Gold level.
4. The Applicant will design the Project with no discernable difference between the interior finishes of the Inclusionary Zoning units and market rate units. The Applicant will fully comply with all Inclusionary Zoning requirements including those involving the unit types and distribution in the building, similar to what is provided in the Final Architectural Drawings.
5. The Applicant shall comply with the following Transportation Demand Management (TDM) strategies for the Project:
  - (a) Sitewide:
    - i. Unbundle the cost of vehicle parking from the lease or purchase or lease agreement for each residential and retail unit and charge a minimum rate above the average market rate within a quarter mile. Free parking or discounted rates will not be provided.
    - ii. Identify Transportation Coordinators for the planning, construction, and operations phases 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.
    - iii. 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 employer tenants must survey their employees and report back to the Transportation Coordinator.
    - iv. Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to the 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.

- v. 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.
- vi. Transportation Coordinator will subscribe to the applicable goDCgo's newsletters.
- vii. Transportation Coordinator will notify goDCgo each time a new retail tenant moves in and provide TDM information to each tenant as they move in.
- viii. Transportation Coordinator will provide links to CommuterConnections.com and goDCgo.com on property websites.
- ix. Transportation Coordinator will post all TDM commitments on property websites, publicize availability, and allow the public to see what commitments have been promised.
- x. Transportation Coordinators will implement a carpooling system such that individuals working in the building who wish to carpool can easily locate other employees who live nearby.
- xi. 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.
- xii. Provide residents and 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 (MWCOG) or other comparable service if MWCOG does not offer this in the future.
- xiii. 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, unless no longer applicable as confirmed by DDOT.
- xiv. 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 (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case.
- xv. Will meet ZR16 short-term bicycle parking requirements.

- xvi. Will exceed ZR16 long-term bicycle parking requirements by 20 spaces. Long-term bicycle space will be provided free of charge to residents and retail employees.
- xvii. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids bikes.
- xviii. Install two (2) 4-dock expansion plates to the existing Capital Bikeshare station at the intersection of C Street at 12th Street SW.
- xix. Install two (2) electric vehicle charging stations in the parking garage.

(b) Residential:

- i. 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).
- ii. Provide a FREE SmarTrip card to every new resident and a complimentary Capital Bikeshare coupon good for one ride. The following additional residential TDM strategies are proposed as mitigations for vehicular impacts at study intersections for which other mitigation options were not available, as noted in the Traffic Operations chapter of this report:
- iii. Will not lease unused parking spaces to anyone aside from tenants of the building.
- iv. Install a Transportation Information Center Display (electronic screen) 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.
- v. Provide a bicycle repair station in the bicycle parking storage rooms.

(c) Retail:

- i. Post "getting here" information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links will be provided to [goDCgo.com](http://goDCgo.com), [CommuterConnections.com](http://CommuterConnections.com), transit agencies around the metropolitan area, and instructions for customers discouraging parking on-street in Residential Permit Parking (RPP) zone.

6. The Applicant shall have flexibility with the design of the project in the following areas:
- (a) **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 Project or design shown in the Final Architectural Drawings. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
  - (b) **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 CFA, DCSHPO or HPRB, provided such colors are within the color ranges shown in the Final Architectural Drawings;
  - (c) **Inclusionary Zoning Units:** To vary the number, type, 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, so long as the interior finishes of the Inclusionary Zoning units are not discernably different from the interior finishes of the market units;
  - (d) **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 in the Final Architectural Drawings;
  - (e) **Landscape:** To vary the final selection of landscaping materials based on availability at the time of construction;
  - (f) **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;
  - (g) **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;
  - (h) **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;
  - (i) **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 in the Final Architectural Drawings;

- (j) **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;
- (k) **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;
- (l) **Use Categories:** To vary the types of uses within the areas designated as “retail”-in the Final Architectural Drawings to include any uses permitted under I-302.1 of the Zoning Regulations.

7. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.1 *et seq.* (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violations will be subject to disciplinary action. The failure or refusal of the Applicant to comply with the Act shall furnish grounds for the denial or, if issued, the revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On March 18, 2021, the Zoning Commission approved this application by a vote of 5-0-0 (Anthony J. Hood, Robert Miller, Peter G. May, Peter Shapiro, Michael G. Turnbull).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*, that is on \_\_\_\_\_.

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

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**SARA BENJAMIN BARDIN**  
**DIRECTOR**  
**OFFICE OF ZONING**