

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



**ZONING COMMISSION OF THE DISTRICT OF COLUMBIA  
Z.C. ORDER NO. 17-05  
Z.C. Case No. 17-05  
2100 2<sup>nd</sup> Street, SW, LLC  
(Capitol Gateway Design Review @ Square 613, Lot 10)  
July 13, 2017**

Pursuant to notice, the Zoning Commission of the District of Columbia (“Commission”) held public hearings on June 5, 2017 and July 13, 2017, to consider an application by 2100 2<sup>nd</sup> Street, SW, LLC (“Applicant”) for design review approval to renovate an existing office building to create a new mixed-use residential building with ground-floor retail uses and below-grade parking (“Project”) in the Capitol Gateway 5 (“CG-5”) zone at 2100 2<sup>nd</sup> Street, S.W. (Square 613, Lot 10). Because the Project is located in the CG-5 zone, design review for the Project is required pursuant to Subtitle K, § 512 of the CG zone provisions of the District of Columbia Zoning Regulations (“Zoning Regulations”), Title 11 of the District of Columbia Municipal Regulations (“DCMR”). In addition, as permitted under 11-X DCMR § 603.3, the Applicant also requested a variance from the drive aisle width requirements of 11-C DCMR § 712.5 and a variance from the penthouse height limit of 11-K DCMR § 505.5.

The Commission considered the application for the Project pursuant to Subtitles X and Z of the Zoning Regulations. The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 4. For the reasons below, the Commission hereby **APPROVES** the application.

**FINDINGS OF FACT**

**Application, Parties, and Hearing**

1. The Property consists of approximately 115,479 square feet of land and is located in the CG-5 zone. (Exhibit [“Ex.”] 2.)
2. The Property is located in the Buzzard Point neighborhood in Ward 6 of the southwest quadrant in the District. (Ex. 2.)
3. On September 14, 2016, the Applicant delivered a Notice of Intent to file a design review application to all property owners within 200 feet of the Property and to Advisory Neighborhood Commission (“ANC”) 6D, the ANC within which the Property is located. (Ex. 2D.)

4. On February 28, 2017, the Applicant filed an application for design review and approval of the Project pursuant to 11-K DCMR § 512 of the Zoning Regulations. In addition, pursuant to 11-X DCMR § 603.1, the Applicant requested a variance from the drive aisle width requirement of 11-C DCMR § 712.5 and a variance from penthouse height limit of 15 feet for mechanical space of 11-C DCMR § 1501 and 11-K DCMR § 505.5. (Ex. 2.)
5. A design review is not among the types of applications that the Commission must first set down for a hearing. Pursuant to 11-Z DCMR § 405.2, applications that do not require setdown are to be sent to the Office of Planning (“OP”) and other “appropriate agencies” as soon as the OZ Director finds them to be complete. The provision also requires that a copy of an application for approval pursuant to Subtitle K § 512.1(a) and (d) “shall also be sent for “review and comment” to the National Capital Planning Commission (“NCPC”).
6. On April 13, 2017 the Applicant filed a Comprehensive Transportation Review for the Project. (Ex. 10-10B.)
7. The ANC filed a written report on the Project on May 9, 2017, in which it indicated that it voted to “offer support with concerns and suggestions.” A discussion of the report appears in the portion of this Order entitled “ANC Report.”
8. The public hearing was initially scheduled for May 15, 2017, but on April 20, 2017, the Applicant requested a postponement of the hearing until June 5, 2017 to continue working with District agencies. (Ex. 11.) As a result, all agency reports were due 10 days prior to that hearing date, i.e., on May 26, 2017.
9. On May 16, 2017, the Applicant filed a pre-hearing statement with revised plans reflecting feedback from and discussions with the government agencies and the ANC. (Ex. 16.)
10. On May 25, 2017, District Department of Transportation (“DDOT”) filed a report, which it supplemented on May 31, 2017. (Ex. 17, 22.)
11. On May 26, 2017, reports were received from OP and the Department of Energy and the Environment (“DOEE”). (Ex. 19, 18.)
12. A full discussion of these reports, and the Applicant’s responses thereto, appears in the portion of this order entitled “Agency Reports.”
13. After the agency reports were received, it was discovered that no referral to NCPC had been made. The belated referral was made on May 30, 2017 and NCPC was given thirty days to respond to provide a report. (Ex. 20.) No report was received.
14. After proper notice, the Commission held a hearing on the application on June 5, 2017. Parties to the case were the Applicant and the ANC. Amelia Martin of Wells + Associates testified regarding the Project’s transportation study and transportation demand management plan (“TDMP”). Expert witnesses appearing on behalf of the

Applicant included Yulia Beltikova of Antunovich Associates, the project architect and Claire Agre of West 8, the landscape architect. David Orr of Orr Partners appeared on behalf of the Applicant. (Ex. 27A1-27A8.)

15. At the June 5, 2017 hearing, a representative of Casey Trees also testified in support of the Project, commending the Applicant's efforts to increase the tree canopy at the Project and provide appropriate plantings on the waterfront. (Ex. 24.)
16. The Commission took action at the July 13, 2017 public hearing to approve the plans submitted into the record and the relief requested.

## **Project Overview**

### **Description of Surrounding Area**

17. The Property is located at the southernmost point of the Buzzard Point neighborhood in southwest Washington along the Anacostia River. The site is the location of the former United States Coast Guard headquarters. (Ex. 2.)
18. The Property is bounded by V Street, S.W. to the north, 2<sup>nd</sup> Street, S.W. to the west, 1<sup>st</sup> Street, S.W., to the east, and the Anacostia River to the south. (Ex. 2.)
19. The Property is located approximately two blocks south of the site of the D.C. United Soccer Stadium and west of Capitol City's development located at 88 V Street (the subject of Z.C. Case No. 10-21A). The Navy Yard and Waterfront Metrorail stations are located approximately one-mile north of the Property. (Ex. 2.)

### **The Property**

20. The Property is 115,479 square feet in size and occupies the entirety of Square 613. (Ex. 2F1.)
21. The Property is improved with a vacant commercial office building with a below-grade parking garage. The existing building occupies approximately 692,873 gross square feet with a density of 6.00 floor area ratio ("FAR") and has a height of 90 feet. The existing building occupies 78% of the lot. (Ex. 2F1.)

### **Project Description**

22. Consistent with the purposes and objectives of the CG-5 zone, the Applicant proposed a mixed-used building containing residential units, ground-floor retail, and below-grade parking. (Ex. 2.)
23. The Property is located in the CG-5 Zone. Generally, the CG zones were established to promote nine primary goals: (1) Assure development of the area with a mixture of residential and commercial uses, and a suitable height, bulk, and design of buildings, as generally indicated in the Comprehensive Plan and recommended by planning studies of

the area; (2) Encourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural, and hotel uses; (3) Allow for continuation of existing industrial uses, which are important economic assets to the city, during the extended period projected for redevelopment; (4) Provide for a reduced height and bulk of buildings along the Anacostia riverfront in the interest of ensuring views over and around waterfront buildings, and provide for continuous public open space along the waterfront with frequent public access points; (5) Require suitable ground-level retail and service uses and adequate sidewalk width along M Street, S.E., near the Navy Yard Metrorail station; (6) Provide for development of Squares 702-706 and Reservation 247 as a ballpark for major league sport and entertainment and associated uses; (7) Provide for the establishment of South Capitol Street between M Street, S.E., and the Anacostia waterfront as a monumental civic boulevard; (8) Provide for the development of Half Street, S.E. as an active pedestrian-oriented street with active ground-floor uses and appropriate setbacks from the street façade to ensure adequate light and air, and a pedestrian scale; and (9) Provide for the development of First Street, S.E. as an active pedestrian-oriented street with active ground-floor uses, connecting M Street, the Metro Station, and existing residential neighborhoods to the Ballpark site and the Anacostia Waterfront. (11-K DCMR § 500.1.)

24. The purposes of the CG-5 zone specifically are to provide for medium-density mixed-use development near the waterfront and to encourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural and hotel uses; provide for a reduced height and bulk of buildings along the Anacostia River in the interest of ensuring views over and around waterfront buildings; and provide for continuous public open space along the waterfront with frequent public access points. (11-K DCMR § 505.1.)
25. The Project consists of approximately 71,120 square feet of gross floor area for retail uses on the ground floor and approximately 442,890 square feet of gross floor area for residential uses on the upper floors. The Project has a density of 4.45 FAR and a height of 90 feet. The Project will occupy 83% of the lot at the ground floor and 61% of the lot on the upper stories. (Ex. 16A.)
26. The Project reduces the existing density by approximately 178,863 square feet. The Project's height is grandfathered as an existing condition. (Ex. 16A.)
27. The rear yard is located along the southern property line and well in excess of the required 12 feet. However, only a portion of the rear yard sets back directly at the waterfront of the Anacostia River; at the southeast corner, the southern property line directly abuts the parcel owned by the National Park Service. The Project's courts, which are all open courts, comply with the dimensional requirements of the Zoning Regulations. All roof structures are set back from the edge of the roof at a ratio of at least 1:1. The elevator overrides at the Project have a height of 18.5 feet and the Applicant has requested variance relief for this height. The Project's green area ratio ("GAR") satisfies the minimum requirements of the CG-5 zone. (Ex. 16A.)

28. Inclusionary zoning under the Zoning Regulations does not apply to conversions of office buildings to residential uses, but does apply to new gross floor area (“GFA”) if it creates at least 10 residential units. Habitable penthouse area may also trigger an Inclusionary Zoning (“IZ”) requirement. (*See* 11-C DCMR §§ 1001.2 (b, d).) The Project includes 33,146 square feet of new residential GFA and 39,959 square feet of penthouse residential GFA. The Applicant is setting aside eight percent of the new residential GFA, an amount equal to 2,650 square feet, at 60% of the Median Family Income (“MFI”) and eight percent of the penthouse GFA, an amount equal to 3,200 square feet, at 50% of the MFI. (Ex. 16A.)
29. The Project’s design, orientation, and massing are based on the adaptive reuse of the existing building, which requires carving out some courtyard space to maximize articulation and views for residents and visitors. The Project includes ground-floor retail, including potential neighborhood serving retail along V Street, S.W., and restaurants along the Anacostia Waterfront. In total, the retail will occupy approximately 71,120 square feet of space. Above the ground floor, the Project will include approximately 442,890 gross square feet of residential floor area. (Ex.16A.)
30. The Project incorporates high-quality materials and a color palette that marks the Property as a location in a burgeoning neighborhood on the Anacostia River. Retail entrances will be located on V Street and on 1<sup>st</sup> and 2<sup>nd</sup> Streets, S.W.; the residential lobby will be accessed from 1<sup>st</sup> and 2<sup>nd</sup> Streets, S.W.; and all loading and parking for the building will be accessed from 1<sup>st</sup> or 2<sup>nd</sup> Streets, S.W. There will also be restaurant entrances at the Project’s riverside frontage. (Ex. 16A.)
31. The Project’s ground level will include retail uses as well as lobby entrances to the upper-story residential uses. In total, the Project will have approximately 485 residential units (including the proposed occupiable penthouse). (Ex. 16A.)
32. Two levels of parking will be provided below grade. The Project’s parking garage includes a total of approximately 361 striped parking spaces accessible from an entrance on 2<sup>nd</sup> Street, S.W. Also included in the Project’s garage are approximately 168 long-term bicycle parking spaces, as well as lockers and changing and shower facilities. An additional 41 short-term bicycle parking spaces will be provided as part of the Project on the streets and sidewalks surrounding the Project. (Ex. 16A, 30A.)
33. The Project will have three loading areas, including a total of one 30-foot berth and 20-foot delivery space for residential loading accessed off of 1<sup>st</sup> Street, S.W., and two 30-foot loading berths, two 55-foot loading berths, and one 20-foot delivery space for retail loading in two separate loading areas accessed off of 2<sup>nd</sup> Street, S.W. (Ex. 16A.)
34. The Project will be built in an environmentally sustainable fashion with the Applicant committing to certification to LEED v. 2009 Gold. (Ex. 30, 30A.)
35. The Project also includes construction of a portion of the Anacostia Riverwalk Trail along the waterfront at the Property. The trail includes active and passive trails, plantings,

and seating for public use. The trail will also include seating, public art, and educational signs that are incorporated into the public realm along the waterfront to provide interactive spaces for visitors. These components will be chosen and finalized consistent with the Anacostia Riverwalk Trail Design Guidelines. (Ex. 16A, 26A, 30A, 34A.)

36. The Project includes high-quality materials appropriate for the Property's location along the waterfront. The materials will vary from the retail base to the residential upper floors to provide façade articulation, with some materials from the base repeating at higher levels to provide building uniformity. The materials include high-density fiber cement boards, which are interspersed with wood-textured panels and some stone to provide variation. (Ex. 16A.)
37. The Property is located within the 100-year floodplain and the current building has an elevation of 9.95 feet. (Ex. 16A.)
38. The initial application had included a proposal to have DC Government raise the streets adjacent to the Property to lift the Property and the surrounding streets out of the 100-year floodplain. Given the lack of available funding for this effort, the Applicant revised the application in its pre-hearing submission to design the Project at its existing grade while incorporating flood proofing plans to encourage resiliency at the Project. (Ex. 16.)
39. The Applicant initially proposed to dry flood proof the Project to 12.71 feet elevation, which is two feet above the 100-year floodplain, but ultimately revised its plans to dry flood proof to the 500-year floodplain, which is an elevation of 14.20 feet. (Ex. 16, 16A, 34A.)
40. All residential units at the Project are located at or above an elevation of 32.53 feet, well above the 14.20 elevation of the 500-year floodplain. (Ex. 16A, 34A.)
41. The Project includes a back-up knee-wall around the perimeter of the building which will be constructed out of flood damage resistant materials. The knee-wall will rise to an elevation of 12.71 feet at storefronts and will exist around the building perimeter except at entrances. (Ex. 16, 16A, 34A.)
42. The dry flood proofing method will be accomplished through the use of flood-damage resistant materials in the knee wall and the use of removable flood shields (active barriers) which are deployed in preparation for a flood event. These shields are in the form of planks which are mounted to the building by the property manager in preparation for a flood event. The dry flood proofing method does not impact the building design except to include a pre-bolted connection on the building where the planks are mounted during a flood event. (Ex. 16, 16A, 34A.)
43. When not in use, the planks will be stored in such a way as to not intrude into public space. Those stored in public space will be flush with the sidewalk and will therefore not negatively impact the public space experience. (Exhibits 16, 16A, and 34A.)



44. The Applicant will prepare a Flood Emergency Plan in connection with the permitting process, which will include provisions for evacuation of all occupants of the building. The Flood Emergency Plan will include an egress plan to ensure safe egress of building occupants. Additionally, the Project includes two refuge areas for occupants who do not evacuate prior to the onset of flooding. One refuge area is located along V Street and can accommodate approximately 70 occupants (standing space). The other refuge area is along 1<sup>st</sup> Street and can accommodate approximately 81 occupants (standing space). (Ex. 16, 16A, 34A.)
45. The Project will be designed to protect the building and the residents from most flood events. Specific details regarding the dry flood proofing will be finalized when the Applicant applies for a building permit. (Ex. 16, 16A, 34A.)

### **Design Approval**

46. The Applicant sought design approval of the Project pursuant to 11-K DCMR § 512 of the CG zone provisions of the Zoning Regulations. As an application for design review pursuant to 11-K DCMR § 512, the Commission must consider the Project against the general design review criteria of 11-X DCMR § 604 and the CG zone design review criteria in 11-K DCMR §§ 512.3 and 512.4.
47. The Project satisfies the general design review criteria of 11-X DCMR § 604 insofar as the Project:
  - a. Is not inconsistent with the Comprehensive Plan, its Future Land Use Map and Generalized Policy Map, and with other adopted public policies and active programs related to the Property. The medium-density commercial and residential designation applicable to the Property supports structures of the height and density at the level proposed, especially when surrounded by open spaces. The policies of the Comprehensive Plan further encourage the provision of housing and affordable housing, increased access to the waterfront, and creating commercial waterfront development, all as exemplified by the Project. Other adopted public policies encourage constructing and linking new development to the Anacostia Riverwalk Trail system as the Project does, and prioritizing access and retail that will draw individuals to the Trail. The Project also furthers the policies of improving environmental conditions along the Anacostia River and conserving the riverfront by creating a shoreline more resistant to erosion with high-quality waterfront landscapes. The Project also utilizes permeable surfaces, maximizes the green roof, and includes significant landscaping, furthering the Plan's policies regarding pervious surfaces and landscaping. The Comprehensive Plan also includes policies related to minimizing impact on air quality, promoting energy efficiency and alternative energy resources, which the Project advances through increased tree planting, additional landscaping, certifying to a LEED Gold standard, and providing solar panels at the Project. The Project advances these objectives as well; (*See* Ex. 2, 16, 26, 30.)

- b. Meets the general Special Exception criteria of Subtitle X, Chapter 9 because the Project will be harmonious with the general purpose and intent of the Zoning Regulations and Zoning Maps for the CG-5 zone by providing needed residential and retail uses to revitalize the waterfront while providing interactive and environmentally friendly trails and access points for visitors to the Anacostia River and comply with the Zoning Regulations in terms of development standards, including proposed uses, and parking, except for a minor request for drive aisle width and penthouse mechanical height variance relief, and includes the adaptive reuse of an existing structure with an established height and reducing the building's density. In addition, the Project will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, and instead the Project is designed to fit in and operate compatibly with neighboring properties and uses. The proposed height, massing, and orientation of the Project are appropriate given the context, and are comparable to adjacent development; and. (*See Ex. 2, 16, 26, 30.*)
  
- c. Satisfies the urban design criteria of 11-X DCMR § 604.7 because the Project:
  - i. Creates street frontages that will be safe, comfortable, and accommodating of pedestrian activity with multiple pedestrian entrances, including retail entrances along V, 1<sup>st</sup>, and 2<sup>nd</sup> Streets, as well as the Anacostia Riverfront, and residential lobby entrances on 1<sup>st</sup> and 2<sup>nd</sup> Streets; the well-designed and coordinated curb cut plan; and ground-floor uses and design that activates the pedestrian realm;
  - ii. Provides public gathering and open spaces, particularly along the riverfront with additional pedestrian and bicycle connections to the Anacostia Riverwalk Trail, including interactive ways for visitors to walk directly to the waterfront;
  - iii. Preserves and enhances a visual connection to and the viewshed of the waterfront;
  - iv. Provides an attractive façade that reinforces the pedestrian realm through the provision of tall ground floors and appropriate levels of transparency with interactive retail uses on the ground floors and high-quality materials and finishes;
  - v. Includes a significant amount of high-quality, environmentally-sensitive landscaping, including along the streets and the Anacostia Riverwalk Trail; and
  - vi. Promotes connectivity both internally and with surrounding neighborhoods and demonstrates connectivity through its provision of a bus stop along V Street to facilitate future public transit in the area, the



extension of the cycle track on 2<sup>nd</sup> Street, and the active and passive trails in the Anacostia Riverwalk Trail. (See Ex. 2, 16, 26, 30.)

48. The Project satisfies the CG design review criteria as set forth in 11-K DCMR § 512.3 because the Project:
- a. Advances the goals and objectives of the CG zone by establishing a mixed-use development that will include a significant residential component and neighborhood-serving retail uses with a height and density appropriate for this area, including through the reduction of the existing mass of a building along the waterfront. The Project is designed to highlight the Anacostia River waterfront as an active, pedestrian-oriented area, coupled with a mix of retail uses that will support and sustain the revitalization of Buzzard Point and serve residents of the community as well as visitors;
  - b. Helps achieve the desired use mix with an entire development devoted to preferred uses. The Project includes a critical number of residential units of varying sizes to accommodate the needs of District residents and families. It also includes retail that will both serve the neighborhood and attract visitors;
  - c. Is in context with the surrounding neighborhood and street patterns due to the Project's adjacency to similar proposed developments in the Buzzard Point area; encourages pedestrian activity along V Street and the Anacostia Riverfront and improves areas in public space on 1<sup>st</sup> and 2<sup>nd</sup> Streets to create continuity between projects in the Buzzard Point area; and appropriately situates the building along the Anacostia Riverfront covering an entire city block to become a focal point for a revitalized area;
  - d. Minimizes conflicts between vehicles and pedestrians by providing a well-designed circulation plan, including limited curb cuts on 1<sup>st</sup> Street, as well as providing a robust TDMP and LMP, including provisions for a mountable curb along 2<sup>nd</sup> Street adjacent to the cycle track to protect cyclists and for a flagger to enhance pedestrian safety and minimize vehicular/pedestrian conflicts along 1<sup>st</sup> and 2<sup>nd</sup> Streets;
  - e. Minimizes unarticulated blank walls on all sides by providing façade articulation accomplished through the use of high-quality building materials and display windows along the ground floor, with a floor-to-ceiling retail height of approximately 21 feet, and a unique building shape which presents multiple opportunities for highly differentiated façade designs; and
  - f. Minimizes impacts on the environment by agreeing to achieve LEED v. 2009 Gold Certification, providing a minimum of 8,000 square feet of solar panels, and including "green" features include adaptive reuse of an existing structure, green roof for stormwater control, urban vegetation, and heat island reduction; sustainable construction materials and recycling of construction waste; green

vehicle parking (carpool programs and electric vehicle charging stations); a Variable Refrigerant Flow ("VRF") mechanical system; and pervious paving in the public right-of-way in 1<sup>st</sup> and 2<sup>nd</sup> Streets. (See Ex. 2, 16, 26, 30.)

49. The Project also satisfies the CG-5 additional design review of 11-K DCMR § 512.4 because the Project:
- a. Provides suitably designed public open space along the waterfront with a highly designed beginning to the Anacostia Riverwalk Trail, a floodable forest component at the river's edge, with multiple access points for the trail and the waterfront, and active and passive trails, all in coordination with the Buzzard Point Vision Framework;
  - b. Includes suitable open space treatment for the Anacostia Riverwalk Trail, including active and passive recreation paths, seating and plantings, a deck area, and an interactive path for direct access to the water, encouraging public access and use of the waterfront at the Property, which creates a functional and usable waterfront from an inaccessible portion of the waterfront now; and
  - c. Preserves and enhances the openness of the waterfront views and vistas from 1<sup>st</sup> and 2<sup>nd</sup> Streets, framing the views of the Anacostia River but enhancing the openness of these views, as well as from the Project's public spaces along the waterfront, and preserves the current open views from the river north to other focal points in the city. (See, generally, Ex. 2, 16, 26, 30.)

#### **Variance Relief—Drive Aisle Width and Penthouse Mechanical Height Requirements**

50. The Applicant requested variance relief pursuant to 11-C DCMR § 712 from the drive-aisle width requirements and the Commission's authority to grant such relief under 11-X DCMR § 603.3; and relief from the penthouse height requirements pursuant to 11-C DCMR § 1501 and 11-K DCMR § 505.5 and the Commission's authority to grant such relief under 11-X DCMR § 603.1.
51. Under the three-prong test for an area variance, the Applicant must demonstrate (1) that the Property is affected by an exceptional or extraordinary situation or condition, (2) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and (3) that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. (*Palmer v. D.C. Bd. of Zoning Adj.*, 287 A.2d 535, 541 (D.C. 1972).) Under the "practical difficulty" prong, the Applicant must show that compliance with the drive aisle width and penthouse height requirements would be unnecessarily burdensome and that such practical difficulty is unique to this particular property.

#### **Exceptional Condition**

52. The Property is subject to exceptional conditions that arise from the existing building on the Property, which is inherited in the land. (Ex. 2.)

53. Primarily, the Property, formerly an office building leased to the United States Coast Guard for its headquarters, will be adaptively reused. The existing building already has a specific height, structural, and internal column grid configuration. Specifically, the structural columns and elevator shafts at the Property already exist. (Ex. 2.)

#### Practical Difficulty

54. Regarding the drive aisle width, 11-C DCMR § 712.5 requires the Project to provide a drive aisle at least 20 feet wide for two-way traffic. However, the proposed Project will only have a drive aisle of 18.33 feet in the below-grade parking facility. Because the Applicant is reusing the existing building on the Property, the Project is limited to the existing structural columns in the parking facility. The columns restrict the drive aisle to a width of 18.33 feet, and therefore the Applicant is unable to provide a drive aisle in compliance with the minimum width. Given that the Project involves adaptive reuse of the existing structure, it would not be feasible to move the structural columns to provide a wider drive aisle. (Ex. 2, 16, 16A.)
55. Regarding the penthouse mechanical height, 11-C DCMR § 1501.1 and 11-K DCMR § 505.5 requires that a penthouse for mechanical space in the CG-5 zone be no taller than 15 feet. The Applicant proposes elevator override penthouses on the roof of the building with a height of 18.5 feet. The Applicant presented significant evidence that, based on the analysis of several manufacturer's models, it is not possible to provide an elevator override within 15 feet of height for the existing size shaft. The elevator overrides are required to provide building-code compliance access to the penthouse. To require the lower height would prevent use of the penthouse at the Property. (Ex. 2, 16, 16A.)

#### No Detriment to the Public Good or Impairment of the Intent of the Zoning Regulations

56. The requested variance relief does not create substantial detriment to the public good and indeed works in harmony with sound urban design principles and does not impair the intent, purpose, and integrity of the Zoning Regulations. The drive aisle width will not have a significant impact on the circulation within the parking facility at the site. The 18.3-foot drive aisles will provide sufficient maneuvering spaces for cars in the below-grade parking facility. Finally, the drive aisle width will not have an impact on the adjacent properties or streets. (Ex. 2, 16, 16A.)
57. Additionally, the Applicant's request for relief from the penthouse height requirements will not be detrimental to the public good. The limited space the elevator overrides occupy will not create an overly large roof structure – rather, these spaces will be limited in size and set back at the required 1:1 ratio from the roof edge. Therefore, the penthouse mechanical heights will not affect views of the area and the elevator overrides serve the good of providing an activated rooftop with scenic views of the natural beauty and monumental views at the Property. (Ex. 2, 16, 16A.)
58. Moreover, the magnitude of the requested relief significantly mitigates any adverse effect on the intent, purpose, or integrity of the Zoning Regulations, Therefore, the relief

granted here will not impair the intent, purpose, or integrity of the Zoning Regulations. (Ex. 2, 16, 16A.)

**Agency Reports**

**Office of Planning**

59. OP provided an initial report on the Project on May 26, 2017, and a supplemental report on July 3, 2017, outlining some comments and concerns regarding the Project and ultimately recommending approval of the Project, which comments and concerns the Applicant responded to and resolved as follows:
- a. OP indicated the Project should be compliant with the Buzzard Point Vision Framework Plan’s goals and guidelines for development. The Applicant’s response to OP’s report noted that its design is in compliance with the Plan and the Applicant committed to working with the government agencies to finalize the Plan; (Ex. 19, 26.)
  - b. OP asked the Applicant to confirm that all projections meet the public space regulations and the Buzzard Point streetscape guidelines, which the Applicant confirmed in its response to agency reports and at the June 5, 2017 public hearing; (Ex. 19, 26.)
  - c. OP encouraged the Applicant to consider a higher level of LEED when the Applicant initially included designing the Project to a LEED-Silver standard, and the Applicant agreed to certify the building to a LEED v. 2009 Gold Standard. (Ex. 19, 26, 30.) OP subsequently requested the Applicant certify the Project under LEED v. 4 as opposed to LEED v. 2009. (Ex. 33.) At the July 13, 2017 public hearing, the Applicant testified that the project was registered under the 2009 program in mid-2016 and that it is still currently a valid version of the LEED program for projects already registered;
  - d. OP requested clarification regarding the affordable housing being provided as part of the Project and its compliance with the IZ regulations, which the Applicant provided. (Ex. 19, 26, 30.) OP confirmed in its supplemental report that the Project complies with the IZ Zoning regulations and that the Applicant provided the requested information. (Ex. 33.) This information is detailed in the charts below:

2100 2 <sup>nd</sup> Street, S.W.					
Residential Unit Type	New Residential GFA /Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type*	Notes
Total	33,146 sf/100%		Life of project	Rental	NA
Market Rate	30,496 sf/92%	Market	Life of project	Rental	NA
IZ	2,650 sf/8%	60% MFI	Life of project	Rental	NA

2100 2 <sup>nd</sup> Street, S.W.					
Residential Unit Type	Penthouse Residential Square Footage /Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type*	Notes
Total	39,959 sf/100%		Life of project	Rental	NA
Market Rate	36,759 sf/92%	Market	Life of project	Rental	NA
IZ	3,200 sf/8%	50% MFI	Life of project	Rental	NA

- e. OP requested rendered views of the waterfront showing the viewshed analysis from 1<sup>st</sup> and 2<sup>nd</sup> Streets to confirm the Project protected the waterfront views. (Ex. 19.) The Applicant provided the requested views and compared them to existing views, confirming that the Project will in fact enhance the views of the water; (Ex. 19, 26, 30.)
- f. OP suggested revising the vehicular turnarounds at 1<sup>st</sup> and 2<sup>nd</sup> Streets to minimize paved areas, limit potential conflicts, and frame the water views, and the Applicant agreed to provide additional pervious surfaces subject to DDOT approval during the public space process when the design of the turnarounds are finalized. More specifically, the Applicant is adding approximately 7,161 square feet of pervious pavers in public space; (Ex. 19, 26, 30.)
- g. OP requested that the Applicant improve the area in the 2<sup>nd</sup> Street right-of-way south of the building, and the Applicant agreed to improve the area south of the roundabout at the end of the 2<sup>nd</sup> Street right-of-way up to the 25-foot natural buffer from the riverfront; (Ex. 19, 26.)
- h. OP requested additional information regarding building materials, which the Applicant provided through a materials board and through testimony at the June 5, 2017 public hearing, demonstrating that the materials are appropriate for the waterfront context of the Project; (Ex. 19, 26.)
- i. OP requested waterfront sections showing details of the building and the Anacostia Riverwalk trail, which the Applicant provided, which confirm the Project's appropriate design for stormwater and flood issues, including a floodable forest by the water's edge, active and passive trails on the Riverwalk Trail, the raised dining terrace adjacent to the building, and the knee wall that is part of the flood proofing program at the Project; (Ex. 19, 26, 30.)
- j. OP noted the Project should comply with the Buzzard Point Riverwalk Guidelines regarding the proposed plant palette and public access, and the Applicant provided additional exhibits illustrating compliance with the draft Guidelines with respect to materials, plant palette, and general design, and confirming ongoing

participation with the agency regarding the Riverwalk Trail. (Ex. 19, 26, 30.) OP requested a condition for an approval that the Riverwalk Trail be designed and constructed in conformance with the Anacostia Riverwalk Trail Design Guidelines, and the Applicant agreed; (Ex. 30D, 33.)

- k. OP's report noted that the Project must comply with the District Stormwater Management, Floodplain, and Building Code Regulations, which compliance will be required at the time of the Building Permit, and the Applicant acknowledged this requirement; and (Ex. 19, 26, 30.)
- l. OP noted the Applicant's commitment to elevate the main electrical room and generator above the 500-year floodplain and requested specificity regarding these locations. (Ex. 33.) The Applicant demonstrated the locations of these rooms during the July 13, 2017 public hearing. (Ex. 34A.)

#### District Department of Transportation

60. DDOT provided an initial report on the Project on May 25, 2017 and indicated it could not fully analyze the project until the Public Space Committee ruled on the Applicant's request to waive the limitation on curb cuts imposed by § 605.9 of the Public Space Regulations (Title 24 DCMR).
61. The waiver was granted and DDOT filed a supplemental report on May 31, 2017. DDOT made several recommendations, all of which were agreed to by the Applicant. The DDOT recommendations and the Applicant responses were as follows:
  - a. DDOT requested the Applicant provide a 19-dock Capital Bikeshare station and first year's operating costs as part of the Project. The Applicant agreed to this commitment. The location of the Capital Bikeshare station will be finalized with DDOT during the public space process; (Exhibits 17, 26.)
  - b. DDOT requested two electronic displays at the Project showing real-time transportation information. The Applicant agreed to provide these and install one electronic display in the residential lobby and the other electronic display in another public location to be determined through the public space process; (Ex. 17, 26.)
  - c. DDOT requested showers, changing facilities, and lockers for use by retail and restaurant employees to encourage bicycling. The Applicant agreed to provide these facilities in the first level of the garage; (Ex. 17, 30.)
  - d. DDOT requested the Applicant unbundle parking costs from the price of lease or purchase of residential units. The Applicant agreed; (Ex. 17, 30.)
  - e. DDOT requested an updated Loading Management Plan to include flagger assistance for all loading deliveries noting that the Public Space Committee's approval of the curb cuts for the site is conditioned on the Applicant providing a



flagger to manage all back-in maneuvers at all curb cuts. The Applicant updated its LMP to include the requested commitment; (Ex. 17, 26B.)

- f. DDOT requested the Applicant modify the Anacostia Riverwalk treatment to replace rough paving with a paving that provides a visual cue to indicate an intersection between active and passive use and to install a narrow band of textured paving at the edge of the active trail where the passive trail intersects it. The Applicant updated its plans to include concrete asphalt at these intersections and a textured paving strip at the edge of the active trail where the passive trail intersects it; (Ex. 17, 26.)
  - g. DDOT requested that the Applicant improve the area in the 2<sup>nd</sup> Street right-of-way south of the building, and the Applicant agreed to improve the area south of the roundabout at the end of the 2<sup>nd</sup> Street right-of-way up to the 25-foot natural buffer from the riverfront; and (Ex. 17, 26.)
  - h. DDOT requested the Applicant provide sidewalk connections to satellite parking locations, and the Applicant agreed to provide six-foot temporary asphalt sidewalks to access satellite parking facilities for which the Applicant enters into an agreement, if a sidewalk does not already exist. (Ex. 17, 30.)
62. DDOT filed a second supplemental report on June 29, 2017, noting that the Applicant had satisfied each of its concerns regarding the Project and recommended approval. (Ex. 31.)

#### Department of Energy and the Environment

63. DOEE provided an initial report on the Project on May 26, 2017, and a supplemental report on June 30, 2017, which it further supplemented with a corrected report on July 7, 2017, and which the Commission accepted at the July 13, 2017 public hearing. DDOE identified several concerns all of which were resolved as follows:
- a. Given the property's location within the 100-year floodplain as defined by the Federal Emergency Management Agency ("FEMA"), DOEE recommended that the Applicant elevate the building at or above the 100-year floodplain to comply with FEMA's minimum requirements and the District's floodplain regulations (20 DCMR § 3105.2) for new construction or substantial improvement to residential structures. DOEE acknowledged that a non-compliant project such as that proposed by the Applicant would require approval of a code modification/floodplain variance request. DOEE provided the Applicant with a list of criteria and required documentation that DOEE and the District's Department of Consumer and Regulatory Affairs use in evaluating applications for code modification or variance on Flood Hazard Rules. DOEE agreed to continue working with the Applicant to evaluate opportunities to provide greater resilience during the project's code modification review and permitting process; (Ex. 32A.)

- b. DOEE requested the Applicant provide greater resiliency due to the increased flood risks at the Property. (Ex. 18.) The Applicant agreed to flood proof up to the 500-year floodplain, which DOEE agreed provided greater resiliency. (Ex. 32A, 34A.) Additionally, all residential units at the Project are located at least 21 feet above the 500-year floodplain, protecting the units and tenants from damage and harm. The Applicant provided detail regarding the revised flood proofing method at the July 13, 2017 public hearing. The Project provides two refuge areas in case of a flood event, one located on V Street and one on 1<sup>st</sup> Street, which can accommodate approximately 150 people. The V Street refuge area will accommodate approximately 70 occupants and is 44 feet in width when installed. It occupies approximately eight feet of the public sidewalk, leaving approximately eight feet of clear sidewalk space for pedestrians. The 1<sup>st</sup> Street refuge area accommodates approximately 81 occupants and is located entirely on the Property. The Project improves the shoreline by removing eroded volunteer trees in poor health, providing appropriate waterfront landscapes and plantings, and improving the surrounding streetscapes to greatly enhance pedestrian access to the waterfront; (Ex. 26, 30, 34A.)
- c. DOEE requested the Applicant capture a higher level of stormwater to benefit the environment. (Ex. 18.) The Applicant will meet the minimum stormwater requirements and designed the area of the building to capture a 0.8” rain event, while the remainder of the site captures a 1.2” rain event. Additionally, the Project includes stormwater capture in public space through permeable paving and streetscape landscaping. The Applicant also agreed to provide 7,161 square feet of permeable paving in public space; (Exhibit 26, Exhibit 32A.)
- d. DOEE noted the Applicant should use lower-emitting technologies, efficient technologies, and should not use ground-level ventilation for the Project to minimize impacts on air quality and emissions. (Ex. 18.) The Applicant utilizes VRF units and does not use traditional boilers, thereby providing a more efficient technology. Additionally, all vents at the Project are located above the ground level and are located above the 500-year flood plain. Finally, the Project includes compliance with Dust Control regulations and increases street trees and landscaping to improve air quality; (Ex. 26.)
- e. DOEE encouraged the Applicant to increase its energy efficiency and to explore alternative energy sources for the Project to create a more resilient and economically progressive Project. (Ex. 18.) The Applicant agreed to certify the Project to a LEED-Gold v. 2009 level, to provide a minimum of 8,000 square feet of solar panels, and to include a whole-building energy model to review and work to reduce energy consumption and energy expenditures for future residents and tenants of the Project when possible. (Ex. 26, 30.) DOEE subsequently requested the Applicant certify the Project under LEED v. 4 as opposed to LEED v. 2009. (Ex. 32A.) At the July 13, 2017 public hearing, the Applicant testified that the project was registered under the 2009 program in mid-2016 and that it is still currently a valid version of the LEED program for projects already registered.

DOEE also encouraged the Applicant to consider additional amounts of solar panels. (Ex. 32A.) The Applicant testified at the July 13, 2017 public hearing that its commitment is to provide a minimum of 8,000 square feet of solar panels at the Project;

- f. DOEE noted the Applicant agreed to raise the electrical and mechanical equipment above the 500-year floodplain elevation; and (Ex. 32A.)
- g. DOEE acknowledged the Project complies with the GAR requirement of 0.3 ratio. (Ex. 32A.)

#### United States Department of the Interior

- 64. Doug Jacobs from the United States Department of the Interior submitted comments on June 1, 2017, simply noting that the Property abutted National Park Service Property, and therefore nothing should be approved on National Park Service land. The Commission notes that the Project does not include components on National Park Service land. (Ex. 23.)

#### ANC Report

- 65. Through a written report dated May 9, 2017, the Chairman of ANC 6D advised the Commission that at its regularly scheduled and properly noticed public meeting of May 8, 2017, the ANC voted 6-0-0 “to offer support with concerns and suggestions” with respect to the Application. The report indicated that its support was based upon changes made by the developer in response to ANC feedback in the following areas:
  - a. Affordable Housing. The Applicant originally proposed paying into the Housing Affordable Trust Fund in lieu of providing affordable units at the project. However, the applicant has agreed to provide the affordable units onsite;
  - b. Pet Relief. Although the Applicant is addressing this issue on-site for its residents, they will continue to work with other Buzzard Point developers with the goal of developing a coordinated and comprehensive response to this issue as development continues in the neighborhood; and
  - c. Retail Space Use. The Applicant is actively pursuing a number of neighborhood-serving retailers such as food market, coffee shop, and pharmacy. Although the Applicant cannot commit to providing any specific retailers, it recognizes that the retail spaces along V Street are in an ideal location for the building’s potential tenants to have convenient access to day-to-day good and services.
- 66. At the June 5, 2017 hearing, a representative of the ANC presented testimony consistent with the ANC’s written report.

## CONCLUSIONS OF LAW

1. The application was submitted, pursuant to 11-K DCMR § 512 for design review and approval by the Commission. Pursuant to 11-X DCMR § 603.3, the application also sought a variance from the drive aisle width requirement of 11-C DCMR § 712.5 and pursuant to 11-X DCMR § 603.1, the application sought a variance from penthouse height limit of 15 feet for mechanical space required by 11-C DCMR § 1501 and 11-K DCMR § 505.5.
2. The Commission provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to ANC 6D, OP, and to owners of property within 200 feet of the Property. The Commission referred the matter to NCPC.
3. Pursuant to 11-K DCMR § 512 and 11-X DCMR § 604, the Applicant has satisfied the required burden of proof necessary for the Commission to approve the overall design of the Project.
4. The Commission reviewed the Project against the general design review criteria of 11-X DCMR § 604, and based on the findings set forth above concludes that the Project satisfies such criteria. The Project is not inconsistent with the Comprehensive Plan and other adopted public policies and active programs related to the subject site. It will not tend to adversely affect the use of neighboring property, it is harmonious with the general purpose and intent of the Zoning Regulations and Zoning Maps, and it satisfies the special exception criteria and urban design objectives in a manner superior to any matter-of-right development possible on the Property.
5. The Commission also reviewed the Project against the CG design review criteria of 11-K DCMR § 512.3 for general CG projects, and based on the findings set forth above concludes that the Project satisfies such criteria as well. Specifically, the Project helps achieve the goals and objectives of the CG zones. More specifically, the Project helps achieve the desired use mix, including residential and retail uses, in the CG zones; and it is in context with the surrounding neighborhood and street patterns. The Project also minimizes conflicts between vehicles and pedestrians. The Project's façade is highly articulated and the Project minimizes its impact on the environment, including through Gold certification under LEED v. 2009.
6. 11-K DCMR § 512.4 sets forth additional CG design review criteria for projects in the CG-5 zone. The Commission reviewed the Project against those additional CG-5 zone design review criteria and concludes the Project satisfies such additional criteria as well. That is, the Project includes suitably designed public open space along the waterfront in the Anacostia Riverwalk Trail, which includes passive and active trails and connections to public space along the waterfront, private maintenance of such spaces, and the Project provides open views to the waterfront to the South and north to other areas of the city.

7. Pursuant to 11-X DCMR § 603.1, the Commission considered the Applicant's request for variance relief from the drive aisle width requirement of 11-C DCMR § 712.5 and from the penthouse height limit of 15 feet for mechanical space of 11-C DCMR § 1501 and 11-K DCMR § 505.5 and concludes that the Applicant satisfied the elements necessary for variance relief. Under the three-prong test for an area variance, the Applicant demonstrated (1) that the Property is affected by an exceptional or extraordinary situation or condition arising from the existing building's adaptive reuse, including existing structural columns and elevator shafts already in place, (2) that the strict application of the Zoning Regulations will result in a practical difficulty to the applicant with respect to such structural columns dictating drive aisle width and the building's existing size and elevator shafts dictating the height of the elevator overrides to service the building, and (3) that the granting of the variances will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan because such relief does not contravene the purposes of the drive aisle width or penthouse height requirements in this instance because the drive aisle width is still able to accommodate circulation at the site and the elevator overrides are all set back at the required 1:1 ratio and therefore will not impact views of neighboring properties.
8. The Commission concludes that the Applicant satisfied all the necessary elements for design review as well as for the relief requested.
9. The Commission concludes that the Applicant responded to the concerns raised by OP, DDOT, and DOEE regarding the Project, and notes that all three agencies recommend approval of the Project.
10. The Commission is required under D.C. Official Code § 1-309.10(d) to give "great weight" to the issues and concerns of the affected ANC expressed in its written report. As reflected in the Findings of Fact, at its duly noticed meeting held on May 8, 2017, ANC 6D, the ANC within which the Property is located, voted 6-0-0 to offer support of the application with concerns and suggestions and based its support on changes to the project regarding affordable housing, pet relief area, and retail space use. The Commission finds that ANC 6D's concerns have been addressed.
11. The Commission is also required to give great weight to the recommendations of OP. (D.C. Official Code § 6-623.04.) As reflected in the Findings of Fact, OP presented two reports and testimony at both public hearings in support of the application and the Applicant responded to questions and items raised in OP's report. The Commission gives OP's recommendation to approve the application great weight, concurs with OP's report, and concludes that the Applicant's responses appropriately addressed OP's questions and concerns.
12. Both DDOT and DOEE recommended approval of the application after the Applicant resolved their initial concerns. The Commission notes that a code modification from the requirements of Title 20 DCMR, Chapter 31 will be required to effectuate the building design and this order does not imply approval of such a code waiver. The Commission further notes that additional details regarding the flood proof protections will be finalized

during the permitting process and that the details submitted by the Applicant are sufficient for purposes of design review under the Zoning Regulations.

13. The Project will promote the continued development of CG into a vibrant mixed-use neighborhood, is sensitive to the site's location on the Anacostia Riverfront, and is in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and the Zoning Map of the District of Columbia.
14. Accordingly, the Commission, concludes that the Applicant has satisfied its burden of proof that design of the Project satisfies the requirements of the Zoning Regulations applicable to the design review of the Project and the variance relief is warranted.

### **DECISION**

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Z.C. Case No. 17-05 for design review, including **APPROVAL** of variance relief and flexibility requested. This approval is subject to the following conditions, standards, and flexibility:

1. Project Development. The Project shall be built in accordance with the plans, including flood proofing plans, and elevations dated May 16, 2017, and marked as Exhibit 16A of the record, as modified by the drawings submitted as Exhibits 26A, 30A, and 34A, and as modified by the guidelines, conditions, and standards herein.
2. The Project will have relief from the drive aisle width requirements and the penthouse mechanical height requirements for elevator overrides.
3. The Applicant will have the following areas of flexibility:
  - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - b. To provide a range in the number of residential units and vehicular parking spaces plus or minus 10%;
  - c. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim, such that the refinements do not substantially change the external configuration or appearance of the building;
  - d. To continue coordination of the streetscape design and areas in public space with DDOT during the public space process; and



- e. To modify the number and location of retail entrances based on the number of tenants ultimately secured for the retail space.
4. Transportation Demand Management Measures. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall demonstrate that it has or will adhere to the following Transportation Mitigation measures as set forth in the DDOT report:
- a. Install an eastbound right-turn lane with a storage length of 150 feet at the intersection of 2<sup>nd</sup> Street and P Street;
  - b. Construct the 2<sup>nd</sup> Street cycle track from V Street to the Anacostia Riverwalk Trail. The cycle track requires a total of 10 feet and the total cart path cross section requires 38-40 feet;
  - c. As part of the public space reconstruction, construct a bus pad in V Street and other supportive elements to support a future bus stop at the corner of V Street and 1<sup>st</sup> Street;
  - d. Improve the area south of the roundabout at the end of the 2<sup>nd</sup> Street right-of-way up to the 25-foot natural buffer from the riverfront.
  - e. Provide a 19-dock Capital Bikeshare station and first year's operating costs;
  - f. Provide a total of two electronic displays showing real-time transportation, to be located in the residential lobby and in another public location to be determined through the public space process;
  - g. Provide showers, changing facilities, and lockers for use by retail and restaurant employees;
  - h. Provide at least seven electric car charging stations within the parking garage; and
  - i. Unbundle parking costs from the price of lease or purchase of residential units.
5. Loading Demand Management Measures. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall demonstrate that it has or will adhere to the following Loading Mitigation measures as set forth in the DDOT report:
- a. A loading dock manager will be designated by the building management (duties may be part of other duties assigned to the individual). He or she will coordinate with vendors and tenants to schedule deliveries and will be on duty from 9:00 a.m. to 5:00 p.m. and will coordinate with the community and neighbors to resolve any conflicts should they arrive;

- b. All tenants will be required to schedule deliveries that utilize the loading dock (any loading operation conducted using a truck 20 feet in length or larger) and all loading activities are required to occur at the loading docks;
- c. The dock manager will schedule deliveries such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as not to compromise safety or impede street or intersection function;
- d. The dock manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic along 2<sup>nd</sup> Street and 1<sup>st</sup> Street except during those times when a truck is actively entering or exiting a loading berth;
- e. Trucks larger than WB-40 will not be permitted in any loading berths except for the northern most loading berth on 2<sup>nd</sup> Street;
- f. Non-certified flaggers will be provided to assist with inbound and outbound truck maneuvers in each of the loading docks to ensure vehicular, bike, and pedestrian traffic is not impeded;
- g. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, § 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route Map; and
- h. The dock manager will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading dock as well as notifying all drivers of any access or egress restrictions. The dock manager will also distribute materials as DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with idling laws. The dock manager will also post these documents and notices in a prominent location within the service area.

6. Affordable Housing. **The Project shall provide affordable housing as follows:**

- a. New Residential GFA: **For the life of the Project**, the Applicant shall set aside no less than eight percent of the New Residential GFA as affordable housing. The Applicant shall:
  - i. Devote approximately 33,146 square feet of New Residential GFA to housing;

- ii. Set aside no less than eight percent of the New Residential GFA, currently equaling approximately 2,650 square feet, as IZ units pursuant to 11-C DCMR, Chapter 10; and
  - iii. Set aside no less than eight percent of the New Residential GFA, currently equaling 2,650 square feet, as IZ units for households earning no more than 60% of the MFI;
- b. Penthouse Residential GFA: **For the life of the Project**, the Applicant shall set aside no less than eight percent of the penthouse residential GFA as affordable housing. The Applicant shall:
- i. Devote approximately 39,959 square feet of penthouse residential GFA to housing;
  - ii. Set aside no less than eight percent of the penthouse residential GFA, currently equaling approximately 3,200 square feet, as IZ units pursuant to 11-C DCMR Chapter 10; and
  - iii. Set aside no less than eight percent of the penthouse residential GFA, currently equaling 3,200 square feet, as IZ units for households earning no more than 50% of the MFI;
- c. The set-aside requirements are set forth in the following charts:

2100 2 <sup>nd</sup> Street SW					
Residential Unit Type	New Residential GFA /Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type*	Notes
Total	33,146 sf/100%		Life of project	Rental	NA
Market Rate	30,496 sf/92%	Market	Life of project	Rental	NA
IZ	2,650 sf/8%	60% MFI	Life of project	Rental	NA

2100 2 <sup>nd</sup> Street SW					
Residential Unit Type	Penthouse Residential Square Footage / Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type*	Notes
Total	39,959 sf/100%		Life of project	Rental	NA
Market Rate	36,759 sf/92%	Market	Life of project	Rental	NA
IZ	3,200 sf/8%	50% MFI	Life of project	Rental	NA

7. **LEED. The Applicant shall submit with its building permit application a LEED checklist** indicating that the Project includes sustainable design features such that the

building achieves LEED-Gold Status. **Within 12 months after the issuance of the Certificate of Occupancy for the building**, the Applicant shall provide evidence to the Zoning Administrator that it has secured Gold Certification or higher from the U.S. Green Building Council under the LEED-v.2009 rating system.


8. **Solar. Prior to issuance of the first Certificate of Occupancy for the Project**, the Applicant shall demonstrate that at least 8,000 square feet of rooftop space is dedicated for solar panels.
9. **Satellite Parking Sidewalks. Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall construct a temporary, asphalt, six-foot wide sidewalk to any satellite parking site with which it has a contract for services.
10. **Riverwalk Trail Design. Prior to issuance of the first Certificate of Occupancy for the Project**, the Applicant shall:
  - a. Design and construct the Riverwalk Trail in conformance with the Anacostia Riverwalk Trail Design Guidelines;
  - b. Install a narrow band of textured paving shall be installed at the edge of the active trail where the passive and active trails intersect to provide a visual cue to passive trail users that they are crossing into an active trail; and
  - c. Replace the “rough paving” on the active trail with paving that provides a visual cue to indicate an intersection between active and passive uses. A “rough paving” with a noticeable texture should not be used in the active trail.
11. The application approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application for building permit must be filed as specified in 11-Z DCMR § 702.2. Construction must begin within three years after the effective date of this Order. 11-Z DCMR § 702.3.
12. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On July 13, 2017, upon the motion of Vice-Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on March 2, 2018.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

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

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 17-05A  
Z.C. Case No. 17-05A  
2100 2<sup>nd</sup> Street SW, LLC  
(Design Review Modification of Consequence @ Square 613, Lot 10)  
October 22, 2018**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on October 22, 2018. At that meeting, the Commission approved the application of 2100 2<sup>nd</sup> Street SW, LLC (“Applicant”) for a modification of consequence to Z.C. Order No. 17-05 (“Order”). The property that is the subject of this modification comprises Lot 10 in Square 613 (“Property”). The modification request was pursuant to § 703 of the Commission’s Rules of Practice and Procedure, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

**Findings of Fact**

1. Pursuant to Chapter 6 of Subtitle X of the Zoning Regulations, the Commission approved the design of a mixed-use building (“Project”) for the former headquarters of the United States Coast Guard at the Property. This approval is reflected in Z.C. Order No. 17-05. (Exhibit [“Ex.”] 1.)
2. On August 10, 2018, the Applicant submitted an application for a modification of consequence related to the redesign and relocation of architectural elements of the building and property area contained in the Order based on plan refinements during the permitting process. The application sought relief to make changes to: a) First Street, b) the rooftop terrace and façade, c) the south façade and terrace, d) building materials, and e) floodproofing plans. The Applicant included a set of plans depicting each of the following proposed modifications with the application: (Ex. 1, 1C.)<sup>1</sup>
  - a. First Street: The modified design incorporated an elevated landing on 1<sup>st</sup> Street and relocated the pet relief area;

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<sup>1</sup> The Applicant initially requested a modification regarding the treatment of the river’s edge, but withdrew that modification based on feedback from the Office of Planning and the Department of Energy and the Environment. (Ex. 5.)



- b. Rooftop Terrace and Façade: The pool was relocated and the modified design included a raised deck and associated trellis, and the penthouse façades were altered slightly;
  - c. South Façade and Terrace: Additional glass was incorporated into the south façade and a covered, open arcade walkway was provided in the southeast corner of the building to connect the restaurant terrace with 1<sup>st</sup> Street. Modifications were also proposed to the terrace wall to reduce its visual presence and to the flooring of the dining terrace;
  - d. Materials: Nichiha products replaced the Trespa and Equitone products approved for the elevation materials. Additionally, panels at the Project and balcony materials were revised slightly; and
  - e. Flood Proofing: The Applicant proposed a different type of temporary flood barriers to floodproof the building instead of the approved aluminum flood planks, which included some revisions to plantings around the Property.
3. The Office of Planning (“OP”) submitted a report dated September 6, 2018, recommending approval of the modification of consequence as requested, and noted comments from the Department of Energy and Environment (“DOEE”) regarding the floodproofing plan. OP supported the modifications as they only change exterior components of the Project and not the overall Project massing and do not change the flexibility granted in the Order. (Ex. 4.)
4. The Applicant submitted a response to OP’s report and an update withdrawing one request for modification. The Applicant noted that DOEE had approved the revised floodproofing plan as part of the Code Modification process. (Ex. 5.)
5. Advisory Neighborhood Commission (“ANC”) 6D, the ANC in which the project is located, submitted a letter dated September 17, 2018, which indicated:

At a regularly scheduled and properly noticed public business meeting on September 10, 2018, with a quorum being present (a quorum being 4), Advisory Neighborhood Commission (ANC) 6D voted 6-0-0 to offer support with concerns and suggestions RE the Capitol Gateway Overlay District Design review ... relief sought by the application noted above.

...

We are concerned with any loss of retail area in this retail-starved area. In this case, approximately 1,414 square feet of retail is lost.

(Ex. 6.)
6. The Commission, at its September 17, 2018 public meeting, determined that the application was properly a modification of consequence within the meaning of 11-Z DCMR §§ 703.3

and 703.4, and that no public hearing was necessary pursuant Subtitle Z § 703.1. The Commission was therefore required by Subtitle Z § 703.17(c)(2) to establish a timeframe for the parties in the original proceeding to file a response in opposition to or in support of the request and for the application to respond thereto; and schedule the request for deliberations. Because the ANC was the only party to the original proceeding, and had filed its report as noted above, the Commission noted there was no need for a timeframe for parties to file a response to the Modification. The Commission set a timeframe for the Applicant to respond to the ANC's letter and to provide an update regarding DOEE's comments by October 9, 2018. The Commission scheduled the request for deliberations for October 22, 2018.

7. The Applicant submitted a response to the ANC's report and an update on DOEE's comments on October 9, 2018, providing a copy of the Code Modification for construction of a mixed-use building within the floodplain for the Project, approved by DOEE, and responding to the ANC's concerns regarding the revisions at the southeastern corner of the Project. The Applicant noted that while the revisions to the southeast corner to provide a covered walkway do minimally reduce the indoor retail square footage, such a loss is minor compared to the gains of the modification. Specifically, the covered walkway provides easier access to the planned restaurants along the southern terrace and creates an opportunity for outdoor seating for the tenant in the southeast corner. (Ex. 7.)
8. The Commission, at its October 22, 2018 public meeting, voted to approve the modification of consequence.

### **Conclusions of Law**

Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized to make "modifications of consequence" to final orders and plans without a public hearing. A modification of consequence means a "modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance. (11-Z DCMR § 703.3.) Examples of modifications of consequence "include but are not limited to, a proposed change to a condition in a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission." (11-Z DCMR § 703.4.)

The Commission concludes that the refinement of plans as described above is a modification of consequence and therefore can be granted without a public hearing.

The Commission finds that the proposed modifications are consistent with the Commission's previous approval of the Project and the Order. The refinements are supported by OP and the affected ANC.

The Commission is required under section 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990, (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001) to give

great weight to OP recommendations. The Commission considered the OP report and, as explained in this decision, finds its recommendation to grant the applications persuasive.

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give “great weight” to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 6D. To satisfy the great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. In this case, the affected ANC expressed concern over the with the loss of approximately 1,414 square feet of retail. The Commission agrees with the Applicant that the benefits of the covered walkway outweigh this relatively small loss of retail.

### **DECISION**

The Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a modification of consequence to the design review project approved in Z.C. Case No. 17-05. The conditions in Z.C. Order No. 17-05 remain unchanged except as follows (deletions noted by ~~strike through~~ text and additions in **bold** and underline text):

1. The Project shall be built in accordance with the plans, including flood proofing plans, and elevations dated May 16, 2017, and marked as Exhibit 16A of the record **of Z.C. Case No. 17-05**, as modified by the drawings submitted as Exhibits 26A, 30A, and 34A **of the record of Z.C. Case No. 17-05**, and as modified by the guidelines, conditions, and standards **contained in the Z.C. Order No. 17-05, as amended by the plans submitted on August 10, 2018, marked as Exhibit 1C of the record of Z.C. Case No. 17-05A**.
  
3. The Applicant will have the following areas of flexibility:
  - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - b. To provide a range in the number of residential units and vehicular parking spaces plus or minus 10%;
  - c. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim, such that the refinements do not substantially change the external configuration or appearance of the building;


- d. To continue coordination of the streetscape design and areas in public space with DDOT during the public space process; ~~and~~
- e. To modify the number and location of retail entrances based on the number of tenants ultimately secured for the retail space-; and
- f. To continue coordination of the floodproofing plans with DOEE during the permitting process.

On October 22, 2018 upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become effective upon publication in the *D.C. Register*; that is on November 9, 2018.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

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

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