

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 20-34**  
**Z.C. Case No. 20-34**  
**Jemal's Cotton Annex L.L.C.**  
**(D-8 Zone - Special Exception and Variances @ Square 326, Lot 806)**  
**March 18, 2021**

Pursuant to notice, at its March 18, 2021, virtual public hearing, the Zoning Commission of the District of Columbia (the “Commission”) considered the application (the “Application”) of Jemal’s Cotton Annex L.L.C. (the “Applicant”) for the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), Zoning Regulations of 2016, to which all references are made unless otherwise specified):

- A special exception review required by Subtitle I § 581; and
- Area variance relief pursuant to Subtitle I § 581.5 from:
  - Subtitle I § 200.3’s maximum density within the footprint of a historic building; and
  - Subtitle I § 207.1’s minimum open court dimensions

to renovate the landmark Cotton Annex structure (the “Annex”) and add an addition (the “Addition”) to create a 12-story apartment house with a ground-floor retail/service/eating and drinking use (the “Project”) for Lot 806 in Square 326 (the “Property”) with an address of 300 12th Street, S.W., in the D-8 zone. The Commission considered the application for the Project pursuant to Subtitles X and Z. For the reasons below, the Commission hereby **APPROVES** the application.

**FINDINGS OF FACT**

**PARTIES**

1. The following were automatically parties to this proceeding pursuant to Subtitle Z § 403.5:
  - The Applicant; and
  - Advisory Neighborhood Commission (“ANC”) 6D, in which district the Property is located and so an “affected” ANC pursuant to Subtitle Z § 101.8.

**NOTICE**

2. By a January 13, 2021, letter (Exhibit [“Ex.”] 7), the Office of Zoning (“OZ”) sent notice of the March 8, 2021 public hearing to:
  - The Applicant;
  - ANC 6D;
  - ANC/SMD 6D01, in whose district the Property is located;
  - Office of ANCs;
  - The Office of Planning (“OP”);
  - The District Department of Transportation (“DDOT”);

- The District Department of Consumer and Regulatory Affairs (“DCRA”);
  - The Office of the Attorney General;
  - The Department of Energy and the Environment (“DOEE”);
  - The D.C. Housing Authority Relocation Committee;
  - The Ward 6 Councilmember, in whose district the Property is located;
  - The Chair and At-Large Members of the D.C. Council; and
  - Owners of property within 200 feet of the Property.
3. Pursuant to Subtitle Z § 402, on January 8, 2021, OZ also published the Notice of Public Hearing in the *D.C. Register*. (Ex. 4.)
  4. The Applicant also posted the Property with the public hearing notice. (Ex. 8.)

### **THE PROPERTY**

5. 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. (Ex. 11.)
6. On the west side of the Property is the historic Cotton Annex building, which is listed on the D.C. Inventory of Historic Sites and the National Register of Historic Places. The building is currently vacant. The Cotton Annex building footprint occupies roughly 13,287 square feet and contains approximately 85,655 square feet of gross floor area in six stories plus a basement. The east side of the Property is currently utilized as a surface lot for public parking. (Ex. 11.)
7. The Property is bounded:
  - To the north – by Lot 807 in Square 326, which is encumbered with an 80-foot wide perpetual access easement along its southern boundary with the Property (the “Access Easement”) that follows the former C Street, S.W., right-of-way that 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 (“C Street Easement Area”);
  - To the east – by the 12<sup>th</sup> Street Expressway;
  - To the south – by D Street, S.W.; and
  - To the west - by 12<sup>th</sup> Street, S.W. (Ex. 11.)
8. The Property has two unusual and significant below grade conditions:
  - A subsurface easement area across the northeastern corner of the Property site for use by the Washington Metropolitan Area Transit Authority (“WMATA”) for its train lines; and
  - A series of heating and chiller line pipes operated by the General Services Administration (“GSA”) that run east-west subgrade through the Property, connecting the Central Heating Plant across 12th Street, S.W., from the Property with various federal buildings in the vicinity. (Ex. 11.)

9. The Property is located in the D-8 zone, which is intended to:
- *“Provide for the orderly development and use of land and structures in areas the Comprehensive Plan generally characterized as:  
(a) Central Washington; or  
(b) Appropriate for a high-density mix of office, retail, service, residential, entertainment, lodging, institutional, and other uses, often grouped into neighborhoods with distinct identities”* (Subtitle I § 100.1) and
  - *“Create a balanced mixture of land uses by providing incentives and requirements for retail, residential, entertainment, arts, and cultural uses the Comprehensive Plan identifies as essential to a successful downtown, and by guiding and regulating office development;*
  - *Protect historic buildings and places while permitting compatible new development, subject to the review process of the Historic Landmark and Historic District Protection Act of 1978;*
  - *Guide the design of buildings into being not inconsistent with the policies of the Central Washington Element and other relevant elements of the Comprehensive Plan;*
  - *Provide for the return of historic L’Enfant streets and rights of way;*
  - *Establish design or use requirements for the ground-level of buildings facing certain streets that are of high priority for furthering retail, pedestrian or historic purposes contained in the Comprehensive Plan;*
  - *Encourage the development of publicly-accessible open space;*
  - *Encourage the development of housing, including the development and preservation of affordable housing, in Central Washington consistent with the policies of the Central Washington Element and other relevant elements of the Comprehensive Plan;*
  - *Provide incentives and flexible mechanisms for achieving the retail, residential, historic, and open spaces goals through the generation and use of density credits that can be traded within defined areas;*
  - *Promote the growth of a well-design mixed-uses and streetscapes on portions of M Street, S.E., South Capitol Street, and properties now devoted to federal offices in Southwest, including a mechanism for selective design review by the Zoning Commission; and*
  - *Provide for adequate and visually acceptable parking and consolidated loading facilities that do not interfere with active, pedestrian-oriented sidewalks and the flow of vehicular traffic.”* (Subtitle I § 100.2.)

### **THE PROJECT**

10. The Applicant proposes to rehabilitate and incorporate the Annex into a 12-story apartment house with the Addition designed as a reverse “C” shape around a central courtyard, to contain:
- Approximately 610 rental apartment units;
  - Approximately 1,552 square feet of ground floor retail/service/eating and drinking uses;
  - Approximately 455,010 square feet of gross floor area (“GFA”), with a 7.38 FAR, of which approximately 90,038 square feet of GFA will be in the Annex; and
  - A maximum building height of approximately 118 feet, 8 inches, not including penthouse. (Ex. 11.)

11. The Annex will be renovated to contain:
  - Approximately 95 of the overall 610 dwelling units proposed for the Project; and
  - A fitness center, leasing office and amenity spaces.
  
12. The Addition will contain:
  - The remaining approximately 515 dwelling units;
  - The main building lobby;
  - Additional amenity space;
  - Approximately 1,552 square feet of ground floor retail/service/eating and drinking space;
  - Approximately 110 parking spaces; and
  - Loading facilities. (Ex. 11.)
  
13. Vehicular ingress and egress and front-in/front-out loading access are accessible along the north frontage of the Project pursuant to the Access Easement across the former segment of C Street, S.W. (Ex. 11.)
  
14. The Addition is scaled to provide a transition in height, measuring approximately 88 feet in height along its northern frontage then increasing in height to approximately 118.75 feet in height at its south, with similar height differentiation occurring from west to east across the Property. This massing approach focuses overall height and density in the east and southeast quadrants of the Property, where taller heights and more modern design are better contextualized with newer construction to the south across Maryland Avenue, S.W., and to the east along 10<sup>th</sup> Street, S.W. The penthouse is likewise shaped to provide a two-story penthouse with residential units and habitable space on the lower penthouse level and mechanical space above, while meeting required setbacks and minimizing overall volume. (Ex. 11.)
  
15. In coordination with the D.C. State Historic Preservation Office, the Applicant has developed a scope of work to preserve, restore, and rehabilitate the vast majority of the Annex, while designing the Addition to be sympathetic to the historic building and its original expansion plan in terms of scale and footprint, and in the process providing a buffer between the Annex and the Addition. The only portion of the Annex proposed for demolition and replacement is a 1980s-era stair tower addition located along the Annex's south wall. Immediately adjacent to the stair tower, fronting 12<sup>th</sup> Street, S.W., is a one-story appendage to the Annex that historically served as a transformer vault that is proposed to be preserved as part of the Project, which generates the Applicant's request for building density zoning relief detailed below. (Ex. 11.)
  
16. The Project will satisfy the Inclusionary Zoning ("IZ") requirements by dedicating approximately 37,281 square feet of residential gross floor area, including penthouse habitable space, to IZ units within the Project, with 45% of the IZ units as studios, 41% as one-bedroom units, and 13% as two-bedroom units. (March 18, 2021, Public Hearing Tr. ["Tr."] at 61.)

## Relief Requested

17. The Application requested:
- A special exception review required by Subtitle I § 581; and
  - Area variance relief pursuant to Subtitle I § 581.5 from:
    - Subtitle I § 200.3's limitation on density within the footprint of a historic building; and
    - Subtitle I § 207.1's court dimensional requirements.

## Applicant's Justification

18. The Applicant filed its initial December 24, 2020, application (Ex. 1, the "Initial Application"), with a complete set of architectural drawings for the Project and a statement in support describing how the Application met the applicable special exceptions under Subtitle I § 581 and Subtitle X § 901.2 and the requested area variance criteria. (Ex. 3A-3G.)
19. The Applicant filed a February 8, 2021, Comprehensive Traffic Review (Ex. 9A, the "CTR") that included a Transportation Demand Management ("TDM") Plan.
20. The Applicant filed a February 26, 2021, prehearing statement (Ex. 11, the "Prehearing Submission"), with a revised set of architectural drawings for the Project (Ex. 11A), and other documents (Ex. 11B-11E), that justified the Application's requests for special exception approval pursuant to Subtitle I § 581 and Subtitle X § 901.2 and for the requested area variances, as follows:
- **Special Exception Design Review pursuant to Subtitle I § 581.1**
    - *Specific special exception standards - Subtitle I § 581.2, furthering the Maryland Avenue Small Area Plan (the "Md Ave SAP")*
      - *Respect or re-establish vistas to the U.S. Capitol, the Washington Monument, and the Smithsonian Institution's original building*

The Application asserted that it complied with this subsection because the proposed height, massing, and siting of the new construction respects vistas to the U.S. Capitol, Washington Monument, and the Smithsonian Institution's original building. From a siting perspective, the Property is not located along any vistas that directly align with the U.S. Capitol, Washington Monument, or the Smithsonian Castle. Notwithstanding, the height and massing of the Project have been developed in a manner that is sensitive to the site's proximity to the former Maryland Avenue corridor to the south, the National Mall to the north, and to the historic Annex itself. The context surrounding the building has greatly informed the height and massing of the Project.

To the north, the lower height and massing of the Project is respectful of the Annex and the open space and monumental character of the National Mall, including the original Smithsonian building. The massing and initial height of approximately 88 feet along the north relates to the historic Annex, and appropriately relates to the 80-foot width of the former C Street right-of-way/access easement to the north.

Together with the proposed hotel project to the immediate north, the Project will provide a first step toward reestablishing the historic C Street right-of-way, and viewshed toward Reservation 113. The lower height and massing are carried along 12<sup>th</sup> Street, S.W., to continue the relationship with the historic Annex, and to the USDA headquarters building and GSA Central Heating Plant. While not in direct alignment with the Washington Monument or the Smithsonian Castle, the proposed height and massing will strengthen the viewshed toward the National Mall by establishing a consistent cross-section and strengthening the streetwall along 12<sup>th</sup> Street, S.W.

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

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

- *Greater pedestrian and vehicle connectivity based on historic street rights-of-way*  
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, S.W., 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, S.W., that results from the ten-foot setback provided to align with the existing Annex.
- *Minimize conflicts between vehicles and pedestrians*  
To minimize vehicle and pedestrian conflicts, the Applicant initially proposed to locate its vehicular parking access point from its northern property line and across the C Street Easement Area while utilizing an existing curb cut along 12<sup>th</sup> Street, S.W., for its loading access. This was done to address the Property's unusual access constraints, its frontages to the south and east being components of the highway system and its northern frontage being private property subject to the C Street Easement Area. As a result of further study by the Applicant and



coordination with DDOT, the Applicant now proposes to remove the loading access point from 12<sup>th</sup> Street, S.W., and combine the parking and loading into a single access point from the C Street Easement Area. The Applicant proposes to provide “front-in-front-out” loading access as well as a ramp to a single level of below grade parking for approximately 110 vehicles as shown on the attached turning radius diagram. To further minimize vehicular conflicts as well as traffic impacts of the Project, the Applicant worked with DDOT to arrive at a series of TDM initiatives that are described in the CTR. The proposed TDM measures include unbundling the price of parking from the lease agreement and charging market rates for parking; agreement not to lease unused parking to anyone outside of building; installation of transit information center in building lobby that provides information related to public transit alternatives; establishment of a transportation coordinator to provide residents up-to-date information regarding transit options, carpooling, and to serve as a point of contact with DDOT.

- *Minimize unarticulated blank walls adjacent to public spaces*  
Despite its frontage on the 12<sup>th</sup> Street Expressway and associated off-ramp on the east and south, respectively, the proposed design treats all four sides of the building as primary facades. 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 Annex and to the surrounding context. In addition, further aesthetic interest and scale are provided to the public realm, and in particular at the ground plane, through the addition of oriel windows and canopy projections.
- *A clear height of least fourteen feet (14 ft.) for ground floor retail spaces adjacent to major street*  
The proposed retail/service/eating and drinking space at the corner of 12<sup>th</sup> and D Streets, S.W., will have a minimum clear ceiling height of 14 feet.
- *Minimize environmental impacts*  
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. The Applicant intends to pursue certification for the Project at the LEED Gold level.
- *Locate and design rooftop structures, architectural embellishments, and penthouses 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 10<sup>th</sup> Street, S.W.*  
The Project will have limited visibility from the Smithsonian Institution’s original building, but the Project’s proximity to the Smithsonian Castle and the National Mall was taken into consideration in the penthouse design. As discussed above, the northern volume of the building has a fairly modest height in response to the Annex. Behind this initial volume, the height of the building increases along the east and south sides of the Property. These taller volumes are the only portions of

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

○ ***General special exception standards - Subtitle X § 901.2***

▪ *In harmony with the general purpose and intent of the Zoning Regulations and Map*

The Project will promote public health and safety by redeveloping a long underutilized property with a well-designed residential project that will advance District and federal goals for this part of Southwest and will help the District achieve its housing and affordable housing goals by adding more than 600 new dwelling units, including approximately 48 IZ units. The design of the Project will not cause adverse impacts to light and air, and the added residential will not result in undue concentration of population. Indeed, the new residential units will add vitality to a primarily federal commercial enclave. Approximately 16% 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. Consistent with the purposes of the D zones, the Project will protect and reinvigorate the historic 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.

▪ *No adverse effect on the use of neighboring property*

The height, massing, and materials of the Project have been designed in a manner that relates to the Property's immediate surroundings. The proposed height of the building is well below the 130-foot maximum height permitted under the Zoning Regulations. In addition, the thoughtful massing of the Project, with height increasing toward the east and south, and the width of the surrounding streets will effectively minimize any potential for adverse impacts to light and air on neighboring properties. To the extent there are any potential impacts to light and air to the proposed hotel project to north, these 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 Md Ave SAP and SW EcoDistrict Plan as being critical to revitalizing this portion



of Southwest. The residential uses will enliven the area, particularly during off-peak weekday hours and weekends when the surrounding office buildings are not fully occupied. The Project will provide more than half of the 1,000 new dwelling units that are referenced in the Md Ave SAP as necessary to establish the critical mass to support significant retail and service uses. Finally, the proposed retail/service/eating and drinking use, albeit small, will provide an additional amenity to residents, workers, and visitors to the area.

- **Area variance relief – pursuant to Subtitle I § 581.5 and Subtitle X § 1001**

- ***Exceptional condition inherent to the Property***

- 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 Addition 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 Project's northeast portion;
- The Annex is designated as an 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 not 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; and
- 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 in complying with the zoning requirements***

- Variance from open court requirements (I § 207.1)

The strict application of the open court requirements would create a practical difficulty for the Applicant that is directly a result of the confluence of the unique shape and public frontage of the Property, the presence of the landmark building, the subsurface constraints imposed by the WMATA tunnel, and the CFA review process. As described above, the Applicant has designed the new addition to the landmark building in a C-shape in order to provide a meaningful interior courtyard buffer and thereby preserve the historic volume of the 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, S.W.,

and unavailable from either the south or 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.

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. This confluence of factors leaves 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, as described below.

- Variance from maximum density within historic resource footprint (Subtitle I § 200.3)

Given the residential nature of the Project, overall building density is not the focus of the variance request. Rather, it is the strict application of the density limitation pertaining to historic resource footprints that creates a significant practical difficulty for the Applicant. The maximum permitted density for a building in the D-8 zone is the density achievable within the height and bulk permitted by the zone and any applicable sub-area regulations if: (a) all of the building's FAR is devoted to residential use; (b) all FAR exceeding the maximum nonresidential 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 Subtitle I, Chapters 8 and 9. (*See* Subtitle I § 576.1.) The maximum permitted non-residential density for a building in the D-8 zone is 6.5 FAR unless a greater density is approved by the Zoning Commission, consistent with Subtitle I § 581. (*See* Subtitle I § 576.4.) Residential density in the D-8 zone is subject to the IZ requirements and bonuses of Subtitle C, Chapter 10. (Subtitle I § 576.3.) If a historic landmark or contributing building or structure in a historic district has an existing density of more than 6.0 FAR on the portion of a lot within the historic structure's footprint, it may not increase the existing density within the historic structure's footprint, but may occupy all of the existing floors of the building for uses permitted within the zone and may generate density credits under the provisions of Subtitle I, Chapter 8. (*See* Subtitle I § 200.3.) The Project does not propose to add any building density atop

the landmark building envelope. In fact, as discussed above, the focus of the Project is to relieve the landmark of additional density pressure. The sticking point for the Applicant is the one-story appendage that extends to the south of the Annex and once served as a transformer vault. Because this appendage technically is considered part of the historic footprint, any construction that would be located atop or above this element will necessarily add to the density on the historic footprint, which already exceeds 6.0 FAR. The Applicant is proposing to add approximately 4,383 square feet of gross floor area, which represents a minor increase in building density on the historic footprint from 6.45 FAR to 6.78 FAR. The strict application of the density limitation within the historic footprint would result in the Applicant not being able to connect the landmark building to new construction on the south side due to the existing one-story transformer. If later phases of the original 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. The general footprint of the Addition is similar to the original design of the Annex. The building generally has a rectangular footprint that contains a double-loaded corridor surrounding a central closed court up to a certain height. As required for historic preservation purposes, the proposed design retains the original corridor configuration in the existing Annex and extends this configuration through the new construction. An inability to connect to the existing corridors at the south end of the building would result in a loss of dwelling units as the Applicant would be required to connect to the existing building in another way that does not go above the existing transformer. This would also unnecessarily require inefficient circulation improvements (additional corridors, means of egress, elevators, etc.) to meet building code requirements. It would also again frustrate the design direction received from the CFA and HPO in terms of establishing the street wall and compatible relationship between the façade of the landmark building and the new construction to its south along 12th Street, S.W.

○ ***Granting the variances will cause no harm to the public good or Zone Plan***

The requested variance relief will not cause substantial detriment to the public good, and will not substantially impair the Zoning Regulations because both areas of variance relief are *de minimis* and will have no impact on the public good:

▪ Variance from open court requirements (Subtitle I § 207.1)

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.

- Variance from maximum density within historic resource footprint (Subtitle I § 200.3)

The variance from the density limitation within the historic footprint of the Annex will not be detrimental to the public good. Indeed, impacts to the public good will be beneficial as the variance relief will facilitate the redevelopment/rehabilitation of the Annex into a vibrant, residential building in an area of the city in dire need of renewed vitality through a wider mix of uses. This density limitation variance will also not substantially impair the purpose, intent, and integrity of the Zoning Regulations. This regulation is intended relieve development pressure from historic resource and protect them from being overbuilt. 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 Annex.

21. The Applicant responded to the DDOT Report in a March 12, 2021, submission (Ex. 16, the “Supplemental Statement”) in which the Applicant agreed to satisfy all of the additional TDM measures requested by the DDOT Report except the public space improvements at the intersection of 13th and C Streets, S.W., which the Supplemental Statement asserted that DDOT and the Applicant “agreed ... is not an appropriate mitigation.” The Supplemental Statement included a memorandum from Gorove/Slade detailing the discussion and itemizing the comprehensive list of TDM measures along with DDOT’s concurrence.
22. At the March 18, 2021, public hearing, the Applicant:
  - Presented its case to as to how the Application met the relevant special exception and area variance review standards; and
  - Testified that:
    - The Property’s numerous regulatory and physical constraints made it economically unviable if the Applicant increased the amount of affordable housing (Tr. at 61);
    - The Applicant would work with the community to ensure that pedestrian and bicycle access is conveniently retained in the area and agreed to a TDM package that includes measures designed to do so; and
    - The Applicant would work with the ANC, DDOT, and other projects regarding construction vehicular routing and staging. (Tr. at 78.)

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

#### **OP**

23. OP filed a March 5, 2021, report (Ex. 12, the “OP Report”) that:
  - Concluded that the Project satisfied the special exception and area variance criteria as follows:
    - The Project does not include a building in an area restricted by Subtitle I § 575.2;
    - The specific special exception standards of Subtitle I § 581 for the requested relief;

- The general special exception standards of Subtitle X § 901.2 for the requested relief; and
  - The area variance standards;
  - Did not object to the Application’s request for design flexibility from final plans of the Project, but requested the Applicant to further clarify the request for flexibility for the proposed parking spaces; and
  - Recommended approval of the Application.
24. OP filed a March 11, 2021, report (Ex. 12A) that corrected the OP Report’s court and FAR calculations.
25. At the March 18, 2021, public hearing, OP testified in support of the Application.

**DDOT**

26. DDOT filed a March 8, 2021, report (Ex. 13, “DDOT Report”), stating that it had no objection to the approval of the Project, conditioned on the Applicant doing the following:
- Implement the Applicant’s TDM Plan for the life of the Project, unless otherwise noted; and
  - Add the following additional TDM measures requested by DDOT:
    - Upgrade all substandard and missing curb ramps and install high-visibility crosswalks on all legs of the intersection of C and 13<sup>th</sup> Streets, S.W.;
    - Install two four-dock expansion plates to the existing Capital Bikeshare station at the intersection of C Street at 12<sup>th</sup> Street, S.W.;
    - Install an additional 20 or more long-term bicycle parking spaces in the bike storage rooms.
    - Install two electric vehicle charging stations in the parking garage; and
    - 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 case record.
27. At the March 18, 2021, public hearing, DDOT testified that it agreed with the Applicant that improvements to the crosswalks at the intersection of 13<sup>th</sup> and C Streets, S.W., an additional TDM measure proposed in the DDOT Report, would not be necessary.

**ANC**

28. ANC 6D submitted a March 10, 2021, report (Ex. 14, the “ANC Report”) stating that at its regularly scheduled and properly noticed March 8, 2021, public meeting at which a quorum of commissioners were present, ANC 6D voted to:
- Express the following concerns:
    - Transportation –
      - Signing and marking are to ensure that there are NO STOPPING restrictions along 12<sup>th</sup> Street, S.W., as well as at the terminus of C Street, S.W., as needed to ensure that the turn-around can function safely;

- The Applicant and their designees agree to work with the ANC, DDOT, and other projects under construction in the vicinity to ensure that:
  - Pedestrian and bicycle access is conveniently retained in this area, including crossings at C Street, S.W.,
  - Construction vehicle routing is defined and better understood; and
  - Construction staging and coordination with the adjacent development at 280 12<sup>th</sup> Street, S.W., as well as other area projects is upheld and proceeds as demonstrated; and
- Affordable housing –
  - The ANC believes that the District’s regulations are too weak to ensure that the supply provided by new development will meet the District’s needs, so that the minimum requirements are only the starting point, not the ending point, to meet what the ANC believes is the spirit of the law;
  - The Applicant make their best efforts toward including at least two three-bedroom affordable units as part of the mix;
  - That Zoning Regulations allocate a greater share of affordable units toward units with two or more bedrooms, and less so on studios; and
- Support the Application with the following conditions, which the ANC concluded satisfactorily address the ANC Report’s concerns and which the Applicant accepted in a letter attached to the ANC Report:
  - The Applicant will design the project with no discernable difference between the interior finishes of the affordable units and market rate units;
  - The Applicant will fully comply with all IZ requirements including those involving the unit types and distribution in the building, similar to the concept plan included in the ANC Report;
  - The Applicant will join the SW BID as a member no later than issuance of the certificate of occupancy; and
  - The Applicant will contribute \$100,000 to the SW Community Foundation, 50% upon issuance of a final order and the remainder upon issuance of the Property’s certificate of occupancy.

## CONCLUSIONS OF LAW

### AUTHORITY

1. Pursuant to the authority granted by the Zoning Act, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Rep1.)), the Commission may approve a design review application consistent with the requirements of Subtitle K, Chapter 2; Subtitle X, Chapter 6; and Subtitle Z § 301.
2. Pursuant to Subtitle I § 581.5, the Commission may hear and decide, as part of a mandatory design review, any additional requests for special exception or variance relief needed for the same property.

### **Special Exception Review**

3. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl); *see also* Subtitle X § 901.2) authorizes the Commission to grant special exceptions, as provided



in the Zoning Regulations, where, in the judgement of the Commission, the special exception:

- *Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,*
  - *Will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and*
  - *Complies with the special conditions specified in the Zoning Regulations.*
4. For the relief requested by the Application, the “specific conditions” are those of Subtitle I §§ 581.2 through 581.4.
5. 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)).

#### **Variance Review**

6. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(3) (2018 Repl.); *see also* Subtitle X § 1000.1) authorizes the Commission to grant variances from the requirements of the Zoning Regulations where:
- *By reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,*
  - *The strict application of any zoning regulation “would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, and*
  - *Granting the requested variance would not cause:*
    - *Substantial detriment to the public good or*
    - *Substantial detriment to the public good or substantial impairment to the intent, purpose, and integrity of the Zone plan as embodied in the Zoning Regulations and Map.”*
7. Subtitle X § 1001 distinguishes between use and area variances,<sup>1</sup> with use variances limited to three specific categories:
- Uses not permitted as a matter of right or by a special exception;
  - Uses expressly prohibited; or

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<sup>1</sup> The Zoning Commission adopted definitions of use and area variances into the Zoning Regulations in 2013 in Z.C. Case No. 12-11; prior to that time these categories had been defined by case law. OP’s setdown report for Z.C. Case No. 12-11 stated that “use variance treatment is only appropriate when an applicant seeks to establish a use that is not permitted at all within a zone district, as opposed to a use that is permitted, but restricted or conditioned in some way.” (Z.C. Case No. 12-11, Ex. 1 at 14.)

- A prohibited expansion of a nonconforming use. (Subtitle X § 1001.4.)
8. The area variance category is instead “open ended” and broadly encompasses deviations from requirements “that affect[s] the size, location, and placement of buildings and other structures ...” and those that are a “precondition to a matter of right use” amongst other examples. (Subtitle X § 1001.3(a) and (f); *NRG, LLC v. D.C. Bd. of Zoning Adjustment*, 195 A.3d 35, 61 (D.C. 2018).)
  9. An applicant for an area variance must prove that an extraordinary condition of the property would result in “peculiar and exceptional practical difficulties” by demonstrating first that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. (*Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990); Subtitle X § 1002.1(a).)
  10. “[B]ecause of the nature of the respective types of variances and their effects on the zone plan the higher ‘undue hardship’ standard applies to requests for use variances while the lower ‘practical difficulty’ standard applies to area variances.” (*Gilmartin*, 579 A.2d at 1170.)
  11. The Commission concludes that the Application’s requests for variance relief properly qualify as area variances because:
    - The requested variances from:
      - Subtitle I § 207.1’s minimum open court dimensions and
      - Subtitle I § 200.3’s limitation on density within the footprint of a historic building are deviations from requirements “that affect the size, location, and placement of buildings and other structures ...” (Subtitle X § 1001.3(f)); and
    - The Application did not request relief under any of the three specific types of use variances defined in Subtitle X § 1001.4. (*See also Monaco v. D.C. Bd. of Zoning Adjustment*, 409 A.2d 1067, 1072 (D.C. 1979) (“We cannot say that the BZA improperly characterized this change as an area variance simply because it facilitated a change of use accomplished, fundamentally, by special exception”).)

**SCOPE OF REVIEW**

12. The Commission concludes that its review of the Application does not include the following:
  - Consistency with the Southwest Neighborhood Small Area Plan because the Property is not located in this planning area, but instead within the boundaries of the Md Ave SAP;
  - Evaluation of the sufficiency of the Project’s affordable housing because:
    - The Project is subject to the mandatory affordable housing set-aside established by the IZ program, which the Commission notes it is currently considering a series of text amendments to increase the IZ set-aside and applicability;
    - The Applicant shall fully comply with all IZ requirements including those involving the unit types and distribution in the building, similar to what is provided in the

- Approved Plans; and shall design the Project with no discernable difference between the interior finishes of the IZ units and market rate units; and
- The Project requires a special exception for design review, not a planned unit development that authorizes additional development flexibility in return for public benefits such as additional affordable housing; or
  - Consideration of challenges to the legitimacy of ANC 6D's position on the Application because these are outside of the Commission's purview, which is limited to the consideration of the ANC Report and testimony and particularly any issues or concerns with the Project identified by the ANC Report.

**SPECIAL EXCEPTION – MANDATORY DESIGN REVIEW**

13. Based on the case record and the Findings of Fact above, the Commission concludes that the Application has satisfied:
- The specific special exception requirements of Subtitle I § 581.2 through 581.4; and
  - The general special exception requirements of Subtitle X § 901.2;
- for the special exception design review required by Subtitle I § 581 for new buildings in the D-8 zone, as discussed below.

**Specific Special Exception Standards - Subtitle I § 581**

14. The Commission concludes that the Project satisfies the requirements of Subtitle I § 581.2 because the Application demonstrated that it furthered the objectives of the Md Ave SAP, including specifically:
- Maintaining the vistas of the U.S. Capitol, the Washington Monument, and the Smithsonian Institution's original building by concentrating the increased height over that of the Annex to the south and east:
    - To continue the Annex's height along both the 12<sup>th</sup> Street and the C Street Easement Area and so strengthen the 12<sup>th</sup> Street, S.W., streetwall and the viewshed towards the National Mall; and
    - To transition from the lower height of buildings near the National Mall to the taller buildings by Banneker Park and so strengthen the streetwall of the closed Maryland Avenue corridor and viewshed towards the Capitol;
  - Increasing the pedestrian and vehicular connectivity for pedestrians and vehicles by:
    - Reconstructing the 12<sup>th</sup> Street, S.W., streetscape with a wider sidewalk due to the Addition's ten-foot setback that aligns it with the Annex; and
    - Restoring the C Street right of way to its original alignment and configuration in coordination with the owner of the abutting property to the north;
  - Minimizing conflicts between vehicles and pedestrians by:
    - Consolidating the Project's parking and loading access to a single point in the C Street Easement Area; and
    - Coordinating with DDOT to finalize appropriate TDM measures;
  - Including façade articulation to minimize unarticulated blank walls adjacent to public spaces by designing all four façades as primary facades with detailed façade articulation including varying heights and masses, oriel windows, and canopy projects, and using high-quality materials that relate to the Annex and surrounding buildings;
  - Ensuring that the proposed retail/service/eating and drinking space at the corner of 12<sup>th</sup>

and D Streets, S.W., will have a minimum clear ceiling height of 14 feet;

- Minimizing environmental impacts by:
    - Meeting or exceeding the required 0.2 GAR for the D-8 zone; and
    - Designing the Project to meet the threshold for designation as LEED Gold pursuant to the LEED For Home V4 Multifamily Mid-Rise standards; and
  - Designing the penthouse 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 10<sup>th</sup> Street, S.W. by:
    - Locating the penthouse to the southern and eastern portions of the Addition; and
    - Reducing the massing impacts of the penthouse by applying a simply horizontal detail between the habitable and mechanical portions of the penthouse.
15. The Commission concludes that the requirements of Subtitle I § 581.3 do not apply to the Project because it is not an area restricted by Subtitle I § 575.2.
16. The Commission concludes that the requirements of Subtitle I § 581.4 do not apply to the Project because the Commission did not consider a reduced bonus density for the Project.

**General Special Exception Standards - Subtitle X § 901.2**

17. The Commission concludes that the Project satisfies the general special exception criteria of Subtitle X § 901.2 for the following reasons.
18. The Commission concludes that the Application satisfies the requirement of Subtitle X § 901.2(a) to be in harmony with the general purpose and intent of the Zoning Regulations and Maps because the Project fulfills the purposes and policies of the D zones, and the D-8 zone in particular, by:
- Redeveloping a long underutilized property with a well-designed residential project that advances District and federal goals by helping transition this portion of Southwest away from the current overconcentration of federal offices to a vibrant, mixed-use, sustainable urban neighborhood;
  - Helping the District achieve its housing and affordable housing goals by adding more than 600 new dwelling units, including an estimated 48 IZ units;
  - Providing for the orderly development of areas deemed appropriate for high-density mixed-use development;
  - Protecting and reinvigorating the historic Annex through a compatible and sensitive residential development that preserves the landmark virtually in its entirety;
  - Providing open space for residents, neighbors, and visitors with the exterior corner courtyard, the large interior, the rooftop and terrace open space, and the private balconies on approximately 16% of the Project’s dwelling units; and
  - Helping reestablish a segment of the original C Street right of way in its historic L’Enfant alignment.
19. The Commission concludes that the Application satisfies the requirement of Subtitle X § 901.2(b) because the Project will not tend to have any adverse impacts on the use of neighboring property because:

- The Project’s height, massing, and materials have been designed in a manner that relates to the Property’s immediate surroundings, with:
    - The Project’s proposed height below the 130-foot maximum permitted height;
    - The Project’s massing increases the height toward the east and south;
  - The width of the surrounding streets and C Street Easement Area minimize and mitigate the potential for adverse impacts to light and air on neighboring properties; and
  - The proposed residential, retail/service/eating and drinking, and related uses are expressly described in the Md Ave SAP and the Southwest EcoDistrict Plan as critical to revitalizing this portion of Southwest D.C. since the combination of these uses will complement the surrounding office buildings, with the Project’s residential units constituting over half of the 1,000 new dwelling units the Md Ave SAP called for to establish the critical mass to support significant retail and service uses and to enliven the area, particularly during off-peak weekday hours and weekends when the surrounding office buildings are not fully occupied.
20. The Commission concludes that the Application satisfies the requirement of Subtitle X § 901.2(c) because it met the specific special exception standards of Subtitle I § 581 as detailed above.

**AREA VARIANCE RELIEF – SUBTITLE X §§ 1000-1002**

**Minimum Open Court Dimensions**

21. Based on the case record and the Findings of Fact, the Commission concludes that the Application satisfies the requirements for the requested area variance relief from Subtitle I § 207.1’s minimum open court dimensions for the following reasons:
- The Property is subject to the following exceptional conditions:
    - The Annex’s designation as an historic landmark that must be preserved and rehabilitated as part of the Project (except for the north side’s noncontributing egress stair) and particularly the one-story transformer vault at the Annex’s southwest corner;
    - The WMATA tunnel that runs below the Property’s northeast portion and limits the Project’s design options;
    - The Property’s unusual chamfered northeast corner created with the 1969 highway dedication for the 12<sup>th</sup> Street Expressway; and
    - 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;
  - The strict application of the open court requirements would create the following practical difficulties due to the confluence of exceptional conditions identified above because, without this open court relief, the Project would either:
    - Lose significant ground floor space and extraordinarily complicate providing parking and loading access from the C Street Easement Area; or
    - Construct the building wall along the Property’s chamfered portion, thereby removing the court entirely but also frustrating the design direction and concept

approval provided by CFA, including the preference for strong rectilinear massing;  
and

- Granting this open court area variance will not cause substantial detriment to the public good and will not substantially impair the Zoning Regulations because:
  - The requested variance is *de minimis*;
  - The variance would authorize 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;
  - The variance would allow the Project's large interior courtyard designed to separate the Addition from the Annex; and
  - The substandard open court's location adjacent to the C Street Easement Area and the 12<sup>th</sup> Street Expressway will satisfy the intent of the regulation to:
    - Ensure adequate light and air into units located on the open court because of the substantial width of the rights of way over the adjacent C Street Easement Area (80 feet wide) and the 12<sup>th</sup> Street Expressway (approximately 111 feet wide); and
    - Improve the façade design for pedestrians because there is no pedestrian circulation on the northeast side of the Annex next to the 12<sup>th</sup> Street Expressway.

### **Maximum Historic Building Density**

22. Based on the case record and the Findings of Fact, the Commission concludes that the Application satisfies the requirements for the requested area variance relief from Subtitle I § 200.3's maximum density within the footprint of a historic building for the following reasons:

- The Property is subject to the following exceptional conditions:
  - The Annex's designation as an historic landmark that must be preserved and rehabilitated as part of the Project (except for the north side's noncontributing egress stair) and particularly the one-story transformer vault at the Annex's southwest corner;
  - The WMATA tunnel that runs below the Property's northeast portion and limits the Project's design options;
  - The Property's unusual chamfered northeast corner created with the 1969 highway dedication for the 12<sup>th</sup> Street Expressway; and
  - 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;
- The Commission concludes that the strict application of the density limits within an historic resource would create the following practical difficulties due to the confluence of exceptional conditions identified above, since without this relief, the Project would be unable to connect the Annex to the Addition on the south side due to the one-story height of the existing transformer and would frustrate the design direction received from the CFA and DCSHPO in terms of establishing the street wall and compatible relationship between the Annex's façade and the new construction to its south along 12<sup>th</sup> Street, S.W., because:
  - If the Annex had 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 Annex's south end;
- As required for historic preservation purposes, the proposed design retains the original corridor configuration in the existing 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:
    - Reduce the number 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;
    - Unnecessarily require inefficient circulation improvements to meet building code requirements; and
  - Granting this variance from the maximum density in a historic resource will not cause substantial detriment to the public good and will not substantially impair the Zoning Regulations because:
    - The requested variance is *de minimis* because it proposes to add approximately 4,383 square feet of GFA, a minor increase in building density on the historic footprint from 6.45 FAR to 6.78 FAR;
    - The variance will facilitate the rehabilitation of the Annex into a vibrant residential building in an area of the District need of renewed vitality through a wider mix of uses; and
    - The variance would authorize additional density only within the footprint of the Annex's one-story transformer vault and would resemble the Annex's original design for the space above the transformer vault and so would not compromise the integrity of the historic Annex.

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

23. The Commission must give “great weight” to the recommendation of OP, pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016).)
24. The Commission finds persuasive OP's analysis of the Application's satisfaction of the requested special exception and area variances, as well as its recommendation to approve the Application, and concurs in that judgement.

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

25. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy this great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court

of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

26. The Commission finds the ANC Report’s concerns with transportation and affordable housing persuasive in general, but does not concur with all of the ANC Report’s proposals to address these concerns as follows:

**Transportation**

- The Commission concludes that the ANC Report’s proposed requiring NO STOPPING restrictions on 12<sup>th</sup> Street, S.W., are not applicable to the Project because it does not seek loading relief, and
- The Commission concludes that the Applicant satisfactorily addressed the ANC Report’s other transportation concerns because the Applicant agreed to:
  - Implement the TDM measures that it negotiated with DDOT as appropriate to mitigate the Project’s potential transportation impacts, with these TDM measures included as conditions of this Order;
  - Work with the community to ensure pedestrian and bicycle access is conveniently retained in the area; and
  - Work with the ANC, DDOT and other nearby development projects to address construction vehicular routing and staging;

**Affordable Housing**

- The Commission shares the ANC Report’s concern that the District needs additional affordable housing and notes that the Commission is currently considering several text amendments to increase the IZ set-asides and applicability, but does not find the ANC Report’s proposal to require additional affordable housing persuasive because:
  - The Application does not seek relief that requires providing additional public benefits;
  - The Project is required to comply with all IZ requirements by a condition of this Order; and
  - The Applicant testified persuasively that providing additional affordable units would likely render the Project infeasible economically; and
- The Commission shares the ANC Report’s concern that the District needs additional two-plus bedroom affordable units but does not find the ANC Report’s proposal to require at least two three-bedroom affordable units persuasive because:
  - As noted above, the Application does not seek relief that requires providing additional public benefits;
  - The Project is required to comply with all IZ requirements, including the size of affordable units, by a condition of this Order; and
  - The Applicant testified persuasively that it would be very difficult to provide three-bedroom affordable units without risking the Project’s economic feasibility.

27. The Commission notes that the ANC Report, despite expressing these concerns, did support the Application and concurs in that judgement, although the Commission concludes that it can only include one of the ANC Report’s three proposed conditions because:

- The requirement that the Project fully comply with the IZ requirements reflects the existing legal requirements and so is included as a condition of this Order; but
- The ANC Report’s conditions that the Applicant join the SW BID and make a contribution to the SW Community Foundation fall outside of the Commission’s review of the Application under the Zoning Regulations, although the Commission notes that the Applicant has agreed to both of these conditions.

## **DECISION**

In consideration of the case record, the Findings of Fact, and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore orders **APPROVAL** of the Application for:

- Special exception review required by Subtitle I § 581; and
- Area variance relief pursuant to Subtitle I § 581.5 from:
  - Subtitle I § 200.3’s limitation on density within the footprint of a historic building; and
  - Subtitle I § 207.1’s court dimensional requirements;
 subject to the following conditions, standards, and flexibility.

### **A. PROJECT DEVELOPMENT**

1. The Project shall be built in accordance with the architectural plans and elevations dated February 25, 2021, and marked as Exhibit 11A (the “Approved Plans”), subject to the following design flexibility from the Approved Plans:
  - 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 Approved Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
  - Exterior Materials – Color: To vary the final selection of the colors of the exterior building materials based on availability at the time of construction and/or to respond to further recommendations by the CFA, DC SHPO, or HPRB, provided such colors are within the color ranges shown in the Approved Plans;
  - IZ Units: To vary the number, type, and location of IZ 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 IZ development standards, so long as the interior finishes of the IZ units are not discernably different from the interior finishes of the market units;
  - 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 Approved Plans;
  - Landscape: To vary the final selection of landscaping materials based on availability at the time of construction;
  - Number of Units: To provide a range in the total square footage of residential dwelling units and the approved number of residential dwelling units of plus or minus five percent;

- Parking Layout: To make refinements to the approved parking configuration, including layout and number of parking spaces, provided the number of spaces is not reduced below the minimum number of spaces required under Subtitle C;
  - Retail Frontage: To make minor refinements to retail frontages, including the location and design of entrances, show windows, and size of retail units, in accordance with the needs of the retail tenants;
  - Signage: To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage shown in the Approved Plans;
  - Streetscape Design: To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
  - Sustainable Features: To vary the approved sustainable features of the Project, provided the total number of LEED points achieved by the Project does not decrease below the minimum required for the LEED standard required under the Order;
  - Use Categories: To vary the types of uses within the areas designated as “retail” in the Approved Plans to include any uses permitted under Subtitle I § 302.1.
2. The Project shall be designed to meet the threshold for designation as LEED Gold pursuant to the LEED For Home V4 Multifamily Mid-Rise standards. The Applicant will pursue certification for the Project at the LEED Gold level.
  3. The Applicant shall design the Project with no discernable difference between the interior finishes of the IZ units and market rate units. The Applicant will fully comply with all IZ requirements including those involving the unit types and distribution in the building, similar to what is provided in the Approved Plans.

## **B. TRANSPORTATION MANAGEMENT CONDITIONS**

1. **For the life of the Project**, The Applicant shall comply with the following Transportation Demand Management (“TDM”) strategies for the Project:
  - Sitewide:
    - 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;
    - 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;
    - 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;
    - 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;
- Transportation Coordinators will receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;
  - Transportation Coordinators will subscribe to the applicable goDCgo’s newsletters;
  - Transportation Coordinators will notify goDCgo each time a new retail tenant moves in and provide TDM information to each tenant as they move in;
  - Transportation Coordinators will provide links to CommuterConnections.com and goDCgo.com on property websites;
  - Transportation Coordinators will post all TDM commitments on property websites, publicize availability, and allow the public to see what commitments have been promised;
  - 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;
  - Distribute information on the Commuter Connections Guaranteed Ride Home program, which provides commuters who regularly carpool, vanpool, bike, walk, or take transit to work with a free and reliable ride home in an emergency;
  - Provide residents and 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;
  - 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;
  - 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;
  - Will meet ZR16 short-term bicycle parking requirements;
  - 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;
  - Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids bikes;
  - Install two (2) 4-dock expansion plates to the existing Capital Bikeshare station at the intersection of C Street at 12th Street, S.W.; and
  - Install two (2) electric vehicle charging stations in the parking garage.
  - Residential Component:
    - 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;

- 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;
- Will not lease unused parking spaces to anyone aside from tenants of the building;
- 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; and
- Provide a bicycle repair station in the bicycle parking storage rooms.
- **Retail Component:**
  - Post “getting here” information in a visible and prominent location on the website with a focus on non-automotive travel modes; and
  - Provide links to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for customers discouraging parking on-street in Residential Permit Parking (“RPP”) zone.

**C. VALIDITY**

1. This approval shall be valid for a period of two years from the effective date of this Order; within such time an application for building permit shall be filed as specified in Subtitle Z § 702.2; and construction shall begin within three years after the effective date of this Order as specified in Subtitle Z § 702.3.


**VOTE (March 18, 2021): 5-0-0** (Peter A. Shapiro, Michael G. Turnbull, Anthony J. Hood, Robert E. Miller, and Peter G. May to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 20-34 shall become final and effective upon publication in the *D.C. Register*; that is on May 28, 2021.

**BY 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**

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC



INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.