

District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 23-7, Sports Wagering Procurement Practices Reform Exemption Act of 2019
- Department of Forensic Sciences defines the roles and responsibilities of the Science Advisory Board
- Department of Housing and Community Development schedules two “Needs Assessment and Fair Housing” Hearings
- Department of Housing and Community Development issues the Rental Housing Commission 2019 Resolution for the Social Security Cost-of-Living Adjustment
- Department of Insurance, Securities and Banking schedules a public hearing on “The State of the Private Passenger Automobile Insurance Market in the District of Columbia”
- Department of Small and Local Business Development announces availability of retail grants to help existing businesses to adapt their business model to meet changing customer demand

DISTRICT OF COLUMBIA REGISTER

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ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-6

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 22, 2019

To exempt, on an emergency basis, the initial procurement contract entered into in connection with the Sports Wagering Lottery Amendment Act of 2018 and the Sports Wagering Lottery Emergency Amendment Act of 2018 from the requirements of the Procurement Practices Reform Act of 2010.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Sports Wagering Procurement Practices Reform Exemption Emergency Act of 2019”.

Sec. 2. The initial procurement contract for the sports wagering, lottery gaming systems and related services entered into in connection with the Sports Wagering Lottery Amendment Act of 2018, enacted on January 23, 2019 (D.C. Act 22-594; 66 DCR 1402), and the Sports Wagering Lottery Emergency Amendment Act of 2018, effective January 30, 2019 (D.C. Act 22-630; 66 DCR 1745) (“initial contract”), shall be exempt from the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*); provided, that the initial contract shall be subject to all certified business enterprise, as that term is defined in section 2302(1D) of the Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.02(1D)), requirements under District law and that the initial contract shall be approved by the Council if required by section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51).

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for the Sports Wagering Procurement Practices Reform Exemption Act, passed on 2nd reading on February 19, 2019 (Enrolled version of Bill 23-25), as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

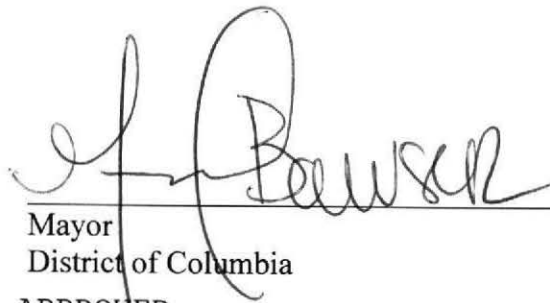
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Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
February 22, 2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-7

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 22, 2019

To exempt the initial procurement contract entered into in connection with the Sports Wagering Lottery Amendment Act of 2018 and the Sports Wagering Lottery Emergency Amendment Act of 2018 from the requirements of the Procurement Practices Reform Act of 2010.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Sports Wagering Procurement Practices Reform Exemption Act of 2019”.

Sec. 2. The initial procurement contract for the sports wagering, lottery gaming systems and related services entered into in connection with the Sports Wagering Lottery Amendment Act of 2018, enacted on January 23, 2019 (D.C. Act 22-594; 66 DCR 1402), and the Sports Wagering Lottery Emergency Amendment Act of 2018, effective January 30, 2019 (D.C. Act 22-630; 66 DCR 1745) (“initial contract”), shall be exempt from the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*); provided, that the initial contract shall be subject to all certified business enterprise, as that term is defined in section 2302(1D) of the Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.02(1D)), requirements under District law and that the initial contract shall be approved by the Council if required by section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51).

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

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Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
February 22, 2019

ENROLLED ORIGINAL

AN ACT
D.C. ACT 23-8

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 25, 2019

To amend, on a temporary basis, the Rental Housing Act of 1985 to extend the due date for the Office of the Tenant Advocate to complete the re-registration component of the rent control housing database and to reset the due date when housing providers are required to file online re-registration statements to within 90 days after the launching of the database.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Rental Housing Registration Extension Temporary Amendment Act of 2019”.

Sec. 2. The Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.01 *et seq.*), is amended as follows:

(a) Section 203c (D.C. Official Code § 42-3502.03e) is redesignated as section 203e.

(b) The second section 203a (D.C. Official Code § 42-3502.03c) is redesignated as section 203c.

(c) The newly redesignated section 203c is amended as follows:

(1) Subsection (a) is amended by striking the phrase “and administer”.

(2) Subsection (e-1)(1) is amended to read as follows:

“(e-1)(1) Notwithstanding subsections (a) and (e) of this section, OTA shall develop an online portal and database for the filing of registration statements and claims of exemption under section 205(f), which OTA shall integrate into the database created pursuant to subsection (a) of this section by December 13, 2019.”.

(d) The second section 203b (D.C. Official Code § 42-3502.03d) is redesignated as 203d.

(e) The newly redesignated section 203d is amended as follows:

(1) The section heading is amended by striking the phrase “and registration”.

(2) The text is amended to read as follows:

“Upon completion of the publicly accessible rent control housing database created pursuant to section 203c, a housing provider shall use the online housing provider portal developed pursuant to section 203c(b)(1) to file all documents and data required to be filed pursuant to this title and all regulations promulgated pursuant to this title.”.

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(f) Section 205(f) (D.C. Official Code § 42-3502.05(f)) is amended as follows:

(1) Paragraphs (1) and (2) are amended to read as follows:

“(1) Within 90 days after completion of the publicly accessible rent control housing database created pursuant to section 203c, each housing provider of a housing accommodation for which the housing provider is receiving rent or is entitled to receive rent shall file a new registration statement and, if applicable, a new claim of exemption via the online housing provider portal developed pursuant to section 203c(e-1).

“(2) A person who becomes a housing provider of a housing accommodation 90 days or more after completion of the publicly accessible rent control housing database created pursuant to section 203c, shall file a registration statement and, if applicable, claim of exemption, within 30 days of becoming a housing provider.”.

(2) Paragraph (3) is amended by striking the phrase “A housing provider shall file a registration statement and, if applicable, a claim of exemption, with the Division in accordance with section 203d, which shall solicit” and inserting the phrase “The registration statement and claim of exemption shall solicit” in its place.

(3) Paragraph (4) is amended as follows:

(A) Subparagraph (A) is amended to read as follows:

“(A) No penalties for failure to previously register the housing accommodation shall be assessed against a housing provider who registers a housing accommodation under this section within 90 days after completion of the publicly accessible rent control housing database created pursuant to section 203c.”.

(B) Subparagraph (B)(i) is amended by striking the phrase “Beginning 241 days after October 30, 2018” and inserting the phrase “Beginning 91 days after completion of the publicly accessible rent control housing database created pursuant to section 203c” in its place.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).


Sec. 4. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved

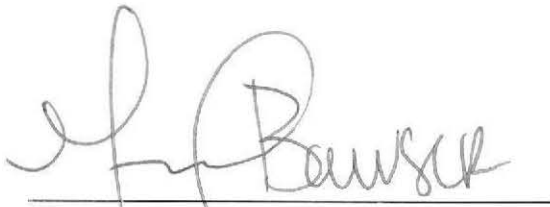
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December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
February 25, 2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-9

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 26, 2019

To protect, on a temporary basis, unpaid federal workers, employees of contractors of the federal government, and household members of federal workers and employees of contractors from eviction, late fees, and foreclosure during a federal government shutdown.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Federal Worker Housing Relief Temporary Act of 2019”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Borrower” shall have the same meaning as provided in section 539b(a)(1) of An Act To establish a code of law for the District of Columbia, effective March 12, 2011 (D.C. Law 18-314; D.C. Official Code § 42-815.02(a)(1)).

(2) “Contractor” shall have the same meaning as provided in 41 U.S.C. § 7101(7).

(3) “Covered period” means:

(A) For a federal worker, the period from the date of a federal worker’s first unpaid payday during a shutdown through the earlier of:

(i) 30 days after the effective date of an appropriations act or continuing resolution that funds a federal worker’s government agency; or

(ii) 90 days after the date of the federal worker’s first unpaid payday.

(B) For an employee of a contractor, the period from the date an employee of a contractor is laid off or otherwise stops receiving pay because of the shutdown through the earlier of:

(i) 30 days after the effective date of an appropriations act or continuing resolution that funds the agency with which the contractor has a contract; or

(ii) 90 days after the employee of a contractor is laid off or otherwise stops receiving pay because of the shutdown.

(4) “Federal worker” means an employee of a government agency.

(5) “Government agency” means each authority of the executive, legislative, or judicial branch of the government of the United States, the District of Columbia Courts, or the District of Columbia Public Defender Service.

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(6) “Household member” means an individual who resides with a federal worker or an employee of a contractor in a housing unit.

(7) “Housing provider” shall have the same meaning as provided in section 103(15) of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.03(15)).

(8) “Housing unit” means any room or group of rooms forming a single-family residential unit, including an apartment, semi-detached condominium, cooperative, or semi-detached or detached home that is used or intended to be used for living, sleeping, and the preparation and eating of meals by human occupants.

(9) “Lender” shall have the same meaning as provided in section 539b(a)(3) of An Act To establish a code of law for the District of Columbia, effective March 12, 2011 (D.C. Law 18-314; D.C. Official Code § 42-815.02(a)(3)).

(10) “Mediation Administrator” shall have the same meaning as provided in section 539b(a)(6) of An Act To establish a code of law for the District of Columbia, effective March 12, 2011 (D.C. Law 18-314; D.C. Official Code § 42-815.02(a)(6)).

(11) “Residential mortgage” shall have the same meaning as provided in section 539a(a) of An Act To establish a code of law for the District of Columbia, effective May 8, 1984 (D.C. Law 5-82; D.C. Official Code § 42-815.01(a)).

(12) “Shutdown” means any period in which there is a lapse in appropriations for a government agency that continues through any unpaid payday for a federal worker employed by that agency.

(13) “Superior Court” means the Superior Court of the District of Columbia.

Sec. 3. Stay of proceedings for evictions and foreclosures.

(a)(1) Notwithstanding any other provision of law, if a housing provider initiates an eviction proceeding in Superior Court against a federal worker, an employee of a contractor, or a household member during the covered period, the federal worker, employee of a contractor, or household member eligible for relief under subsection (c) or subsection (d) of this section, as applicable, may move the court to stay proceedings until the covered period elapses. The movant shall attach to the motion the documentation required by subsection (c) or subsection (d) of this section, as applicable, to establish the movant’s eligibility under this section. The court shall grant the motion to stay the proceeding if the court determines that the federal worker, employee of a contractor, or household member has submitted the required documentation necessary to establish eligibility for relief in accordance with subsection (c) or subsection (d) of this section, as applicable.

(2) Notwithstanding any other provision of law, a federal worker, an employee of a contractor, or a household member eligible for relief under subsection (c) or subsection (d) of this section, as applicable, may also move the court to void late fees charged by a housing provider pursuant to section 531 of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3505.31). The court shall grant the motion if the late

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fees accrued during the covered period.

(b)(1) Notwithstanding the requirements set forth in section 539b of An Act To establish a code of law for the District of Columbia, effective March 12, 2011 (D.C. Law 18-314; D.C. Official Code § 42-815.02), upon the request of a borrower who is a federal worker, an employee of a contractor, or a household member eligible for relief under subsection (c) or subsection (d) of this section, as applicable, the Mediation Administrator shall stay the mediation and shall not issue a mediation certificate to a lender until the covered period elapses. The borrower shall provide the documentation required by subsection (c) or subsection (d) of this section, as applicable, to establish the borrower's eligibility.

(2) Notwithstanding any other provision of law, if during the covered period but before the effective date of this act, the Mediation Administrator issued a mediation certificate and the lender gave written notice of the intention to foreclose on a residential mortgage, a federal worker, employee of a contractor, or household member eligible for relief under subsection (c) or subsection (d) of this section, as applicable, may petition the Superior Court to stay the sale until the covered period has elapsed. The petitioner shall attach to the petition the documentation required by subsection (c) or subsection (d) of this section, as applicable, to establish the petitioner's eligibility under this section. The court shall grant the petition to stay the sale if the court determines that the federal worker, employee of a contractor, or household member has submitted the required documentation necessary to establish eligibility for relief in accordance with subsection (c) or subsection (d) of this section, as applicable.

(3) Notwithstanding any other provision of law, if a lender initiates a foreclosure proceeding in Superior Court against a federal worker, an employee of a contractor, or a household member during the covered period, the federal worker, employee of a contractor, or household member eligible for relief under subsection (c) or subsection (d) of this section, as applicable, may move the court to stay the proceeding until the covered period elapses. The movant shall attach to the motion the documentation required by subsection (c) or subsection (d) of this section, as applicable, to establish the movant's eligibility under this section. The court shall grant the motion to stay the proceeding if the court determines that the federal worker, employee of a contractor, or household member has submitted the required documentation necessary to establish eligibility for relief in accordance with subsection (c) or subsection (d) of this section, as applicable.

(c) To be eligible for the relief set forth in this section:

(1) A federal worker shall submit to the court or Mediation Administrator one of the following:

(A) A pay stub issued by a government agency showing zero dollars in earnings for the federal worker for a pay period within the period of the shutdown; or

(B) A copy of a furlough notification letter or essential employee status letter; and

(2) An employee of a contractor shall submit to the court or Mediation Administrator a letter from the contractor, issued and signed by an officer or owner of the

ENROLLED ORIGINAL

company or by the company’s human resources director, stating:

(A) That the employee of the contractor was laid off or is otherwise not receiving pay from the contractor because of the shutdown;

(B) The date that the employee of the contractor was laid off or otherwise stopped receiving pay from the contractor; and

(C) The name of the agency with which the contractor had a contract.

(d)(1) A household member who is a party to the rental agreement subject to an eviction action or the residential mortgage subject to a foreclosure proceeding shall be eligible for the relief set forth in this section if the household member submits to the court or Mediation Administrator:

(A) Sufficient documentation that a federal worker or employee of a contractor resides in the same household unit as the household member, which shall include any 2 of the following that displays a name and home address for the federal worker or employee of a contractor:

(i) A current government-issued photo identification;

(ii) A utility bill dated no more than 60 days before the beginning of the covered period;

(iii) A bank or credit card statement dated no more than 60 days before the beginning of the covered period;

(iv) A student loan statement dated no more than 60 days before the beginning of the covered period; or

(v) Official mail received from a government agency or a District government agency dated no more than 60 days before the beginning of the covered period;

(B) The documentation required to be submitted by the federal worker or the employee of the contractor under subsection (c) of this section; and

(C) Sufficient documentation that the federal worker or employee of a contractor contributes at least 25% of the monthly rent or mortgage payment, which shall include any of the following for at least 2 of the 6 months before the beginning of the covered period:

(i) Cancelled checks;

(ii) Bank statements;

(iii) Electronic records of payment; or

(iv) Receipts.

(2) A household member shall continue to timely pay the household member’s percentage share of the rent or mortgage payments. Failure of a household member to make timely payment of the household member’s share of the rent or mortgage payment shall be grounds for lifting a stay of the proceeding.

ENROLLED ORIGINAL


Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

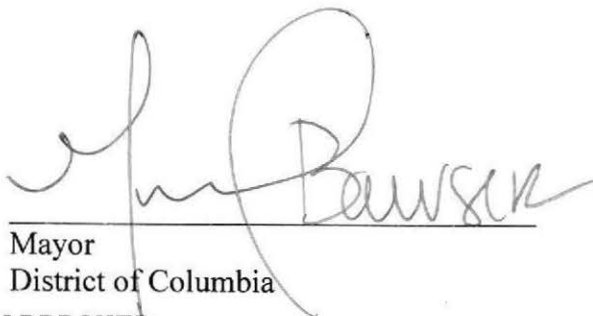
Sec. 5. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
February 26, 2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-10

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 25, 2019

To amend, on an emergency basis, due to congressional review, the Health Services Planning Program Re-establishment Act of 1996 to clarify that the State Health Planning and Development Agency currently has the authority to approve or disapprove the closure or termination of services of a health care facility; and to amend the Health-Care and Community Residence Facility Hospice and Home Care Licensure Act of 1983 to authorize the Director of the Department of Health to issue a provisional license in the specified circumstance.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Clarification of Hospital Closure Procedure Congressional Review Emergency Amendment Act of 2019”.

Sec. 2. Section 7(c) of the Health Services Planning Program Re-establishment Act of 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-406(c)), is amended by striking the phrase “extent possible.” and inserting the phrase “extent possible, which may include organizing meetings with affected stakeholders and providing planning and technical assistance for possible patient load transition, and, if the notice of closure is approved by SHPDA, continue to assist in the orderly transition by overseeing the placement of patients into new HCFs in a manner that ensures that the health and well-being of the patients is protected.” in its place.

Sec. 3. Section 7 of the Health-Care and Community Residence Facility Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-506), is amended as follows:

(a) Subsection (c) is amended by striking the phrase “Provisional licenses” and inserting the phrase “Except as provided in subsection (f) of this section, provisional licenses” in its place.

(b) A new subsection (f) is added to read as follows:

“(f)(1) If a notice of closure of a health care facility or health service is denied by the State Health Planning and Developmental Agency pursuant to section 7(c) of the Health Services

ENROLLED ORIGINAL

Planning Program Re-establishment Act of 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-406(c)), the Director of the Department of Health may issue a provisional license to the health care facility or health service to continue to operate for up to 3 years.

“(2) For the purposes of this subsection, the terms “health care facility” and “health service” shall have the same meanings as provided in section 2(10) and (12) of the Health Services Planning Program Re-establishment Act of 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-401(10) and (12)), respectively.”.

Sec. 4. Applicability.

This act shall apply as of January 30, 2019.

Sec. 5. Fiscal impact statement.

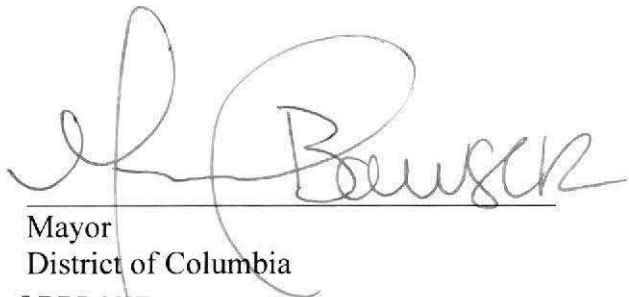
The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
February 25, 2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-11

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 25, 2019

To approve, on an emergency basis, Modification Nos. 7, 8, 9, 10, 11, and 12 to Contract No. CW36154 with WM Recycle America, LLC to transport, process, and market recyclables from the District’s residential recycling drop-off facilities, and to authorize payment for the goods and services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Modifications to Contract No. CW36154 Approval and Payment Authorization Emergency Act of 2019”.

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 7, 8, 9, 10, 11, and 12 to Contract No. CW36154 with WM Recycle America, LLC to transport, process, and market recyclables from the District’s residential recycling drop-off facilities, and authorizes payment in the amount of \$2.5 million for the goods and services received and to be received under the modifications.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

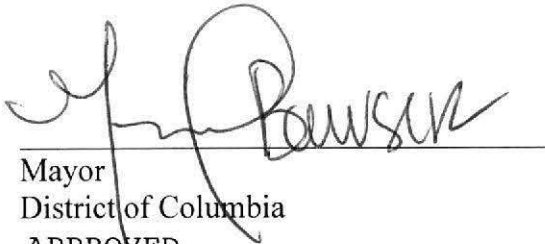
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

ENROLLED ORIGINAL

section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
February 25, 2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-12

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 25, 2019

To approve, on an emergency basis, Modification Nos. 46 and 47 to Contract No. POKV-2006-C-0064 with Conduent State & Local Solutions, Inc. to provide ticket processing and related services for the Department of Motor Vehicles, and to authorize payment for the goods and services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Modifications to Contract No. POKV-2006-C-0064 Approval and Payment Authorization Emergency Act of 2019”.

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 46 and 47 to Contract No. POKV-2006-C-0064 with Conduent State & Local Solutions, Inc. to provide ticket processing and related services for the Department of Motor Vehicles, and authorizes payment in the amount of \$8,736,368 for the goods and services received and to be received under the modifications.

Sec. 3. Fiscal impact statement.


The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

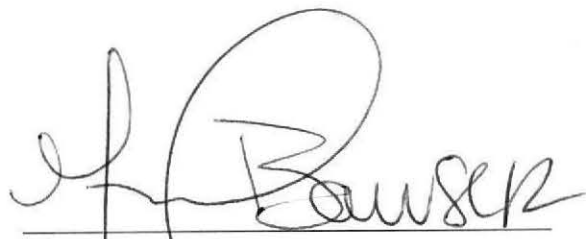
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

ENROLLED ORIGINAL

section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
February 25, 2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-13

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 25, 2019

To amend, on an emergency basis, the Bryant Street Tax Increment Financing Act of 2016 to extend the deadline to terminate the Bryant Street TIF Area from March 1, 2019, to March 1, 2020, and to clarify the District's ability to refund bonds.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Bryant Street Tax Increment Financing Emergency Amendment Act of 2019".

Sec. 2. The Bryant Street Tax Increment Financing Act of 2016, effective April 7, 2017 (D.C. Law 21-262; D.C. Official Code § 2-1217.37a *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 2-1217.37a) is amended as follows:

(1) Paragraph (7) is amended by striking the phrase "(including refunding Bonds, notes, and other obligations)".

(2) Paragraph (9) is amended by striking the word "Bonds" and inserting the phrase "Bonds and Refunding Bonds" in its place.

(3) Paragraph (11) is amended by striking the word "Bonds" and inserting the phrase "Bonds and Refunding Bonds" in its place.

(4) Paragraph (15) is amended by striking the word "Bonds" and inserting the phrase "Bonds and Refunding Bonds" in its place.

(5) A new paragraph (17A) is added to read as follows:

"(17A) "Refunding Bonds" means the District of Columbia bonds, notes, or other obligations, in one or more series, authorized to be issued pursuant to this act to refund the Bonds."

(b) Section 3(b) and (c) (D.C. Official Code § 2-1217.37b(b) and (c)) is amended by striking the word "Bonds" wherever it appears and inserting the phrase "Bonds and Refunding Bonds" in its place.

(c) Section 4(d) (D.C. Official Code § 2-1217.37c(d)) is amended as follows:

(1) Paragraph (2) is amended by striking the word "Bonds" and inserting the phrase "Bonds and Refunding Bonds" in its place.

(2) Paragraph (3) is amended by striking the phrase "March 1, 2019, if no Bonds are issued." and inserting the phrase "March 1, 2020, if no Bonds are issued (excluding

ENROLLED ORIGINAL

Refunding Bonds).” in its place.

(d) Section 5(c) and (d) (D.C. Official Code § 2-1217.37d(c) and (d)) is amended by striking the word “Bonds” wherever it appears and inserting the phrase “Bonds and Refunding Bonds” in its place.

(e) Sections 6 through 14 ((D.C. Official Code §§ 2-1217.37e, 2-1217.37f, 2-1217.37g, 2-1217.37h, 2-1217.37i, 2-1217.37j, 2-1217.37k, 2-1217.37l, and 2-1217.37m) are amended by striking the word “Bonds” wherever it appears and inserting the phrase “Bonds and Refunding Bonds” in its place.

(f) Section 15 (D.C. Official Code § 2-1217.37n) is amended by striking the phrase “shall expire on March 1, 2019;” and inserting the phrase “(excluding Refunding Bonds) shall expire on March 1, 2020;” in its place.

Sec. 3. Fiscal impact statement.

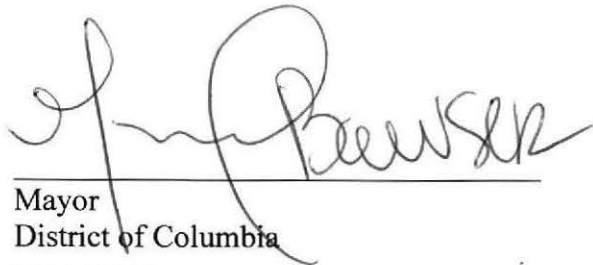
The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat.788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
February 25, 2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-14

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 25, 2019

To amend, on an emergency basis, the District of Columbia Unemployment Compensation Act to provide that a furlough-excepted federal employee is eligible for unemployment benefits during a federal-government shutdown; and to amend the Federal Worker Housing Relief Emergency Act of 2019 to provide protections to employees of the District of Columbia Public Defender Service.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Supporting Essential Workers Unemployment Insurance Emergency Amendment Act of 2019”.

Sec. 2. The District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 946; D.C. Official Code § 51-101 *et seq.*), is amended as follows:

(a) Section 1(5) (D.C. Official Code § 51-101(5)) is amended to read as follows:

“(5) An individual shall be deemed “unemployed” with respect to any week during which:

“(A) The individual performs no service and with respect to which no earnings are payable to the individual or with respect to any week of less than full-time work if 66% of the earnings payable to the individual with respect to such week are less than the individual’s weekly benefit amount plus \$50; or

“(B)(i) The individual’s earnings are funded through federal appropriations that have lapsed;

“(ii) The individual performed services as an excepted employee of the federal government and will not receive earnings from the federal government during the lapse in appropriations; and

“(iii) The individual was notified by his or her federal agency of his or her status as an excepted employee before the individual performed services during the lapse in appropriations.”.

(b) A new section 10a is added to read as follows:

“Sec. 10a. Applicability to certain federal employees.

ENROLLED ORIGINAL

“(a) Notwithstanding any provision of this act, the Director may provide benefits to an individual who is determined to be unemployed pursuant to section 1(5)(B) (a “furlough-excepted federal employee”); provided, that the Director do so in a manner that is consistent with federal law.

“(b) If a furlough-excepted federal employee receives benefits pursuant to this section and, after the applicable lapse in appropriations ends, receives earnings attributable to the period for which the benefits were paid, the employee shall repay promptly to the District the benefits paid by the District for that period; provided, that the Director may for good cause waive this requirement.

“(c) No federal funds shall be used for the payment of benefits pursuant to this section or the payment of administrative costs to implement the provisions of this section.”.

Sec. 3. Section 2(5) of the Federal Worker Housing Relief Emergency Act of 2019, passed on emergency basis on January 22, 2019 (Enrolled version of Bill 23-80), is amended by striking the phrase “government of the United States, or the District of Columbia Courts” and inserting the phrase “government of the United States, the District of Columbia Courts, or the District of Columbia Public Defender Service” in its place.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

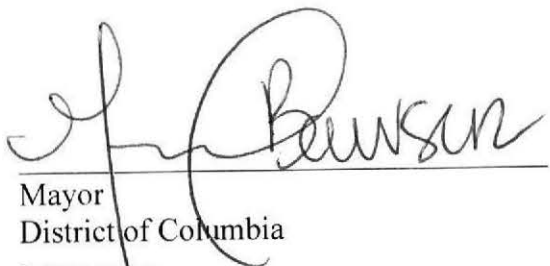
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
February 25, 2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-15

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 25, 2019

To amend, on an emergency basis, due to congressional review, the Child Development Facilities Regulation Act of 1998 to exempt parent-led play cooperatives from the requirements of the Child Development Facilities Regulation Act of 1998.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Parent-led Play Cooperative Congressional Review Emergency Amendment Act of 2019”.

Sec. 2. The Child Development Facilities Regulation Act of 1998, effective April 13, 1999 (D.C. Law 12-215; D.C. Official Code § 7-2031 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 7-2031) is amended by adding a new paragraph (5A) to read as follows:

“(5A) “Parent-led play cooperative” means a group of parents, step-parents, or legal guardians of participating children, including a group organized through a nonprofit organization, who have agreed to supervise the participating children during group meetings and that:

“(A) Meets at predetermined times for less than a full day;

“(B) Meets at locations other than a home of one of the parents, step-parents, or legal guardians in the group;

“(C) Does not require payment by parents, step-parents, or legal guardians, other than to cover the costs of administering the group, including rent, insurance, equipment, and activities;

“(D) Does not employ any individual to supervise participating children on behalf of parents; provided, that a parent-led play cooperative may employ an individual to:

“(i) Facilitate activities while parents, step-parents, or legal guardians supervise the participating children; or

“(ii) Assist with administering the group;

“(E) Requires, as a prerequisite to joining the group, that a parent, step-parent, or legal guardian of each participating child in the group volunteer a minimum number of hours to supervise the participating children during meetings, regardless of whether the group

ENROLLED ORIGINAL

requires parents, step-parents, or legal guardians of every child to be present at every meeting; and

“(F) Notifies, upon registration with the group, the parents, step-parents, and legal guardians of each participating child in the group that the group is not a child development facility licensed pursuant to this act.”.

(b) Section 4 (D.C. Official Code § 7-2033) is amended by adding a new paragraph (2A) to read as follows:

“(2A) “Parent-led play cooperative;”.

Sec. 3. Applicability.


This act shall apply as of January 21, 2019.


Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).


Chairman
Council of the District of Columbia


Mayor
District of Columbia

APPROVED
February 25, 2019

ENROLLED ORIGINAL

A RESOLUTION

23-25

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 19, 2019

To confirm the reappointment of Dr. John D. Robinson to the Commission on Human Rights.

RESOLVED, BY COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on Human Rights John D. Robinson Confirmation Resolution of 2019".

Sec. 2. The Council of the District of Columbia confirms the reappointment of:

Dr. John D. Robinson
6735 13th Place, N.W.
Washington, D.C. 20012
(Ward 4)

as a member of the Commission on Human Rights, established by section 401 of the Human Rights Act of 1977, effective December 7, 2004 (D.C. Law 15-216; D.C. Official Code § 2-1404.01), in accordance with section 2(e)(8) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)(8)), for a term to end December 31, 2018.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-26

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 19, 2019

To confirm the appointment of Mr. Larry Moon to the Commission on Re-Entry and Returning Citizen Affairs.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Commission on Re-Entry and Returning Citizen Affairs Larry Moon Confirmation Resolution of 2019”.

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Mr. Larry Moon
507 51st Street, S.E.
Washington, D.C. 20019
(Ward 7)

as a public member of the Commission on Re-Entry and Returning Citizen Affairs, established by section 4 of the Office on Ex-Offender Affairs and Commission on Re-Entry and Ex-Offender Establishment Act of 2006, effective March 8, 2007 (D.C. Law 16-243; D.C. Official Code § 24-1303), for a term to end August 4, 2020.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-27

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 19, 2019

To confirm the appointment of Mr. John Matthews to the Commission on Re-Entry and Returning Citizen Affairs.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Commission on Re-Entry and Returning Citizen Affairs John Matthews Confirmation Resolution of 2019”.

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Mr. John Matthews
307 11th Street, S.E.
Washington, D.C. 20003
(Ward 6)

as a public voting member of the Commission on Re-Entry and Returning Citizen Affairs, established by section 4 of the Office on Ex-Offender Affairs and Commission on Re-Entry and Ex-Offender Establishment Act of 2006, effective March 8, 2007 (D.C. Law 16-243; D.C. Official Code § 24-1303), for a term to end August 4, 2021.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-28

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 19, 2019

To declare the existence of an emergency with respect to the need to approve Modification Nos. 3 and 5 to Contract No. CW50466 with KPMG, LLP, to provide business management and financial advisory services and to authorize payment for the goods and services received and to be received under the modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Modifications to Contract No. CW50466 Approval and Payment Authorization Emergency Declaration Resolution of 2019”.

Sec. 2. (a) There exists a need to approve Modification Nos. 3 and 5 to Contract No. CW50466 with KPMG, LLP, to provide business management and financial advisory services, and to authorize payment for the goods and services received and to be received under the modifications.

(b) On March 27, 2018, by Modification No. 3, the Office of Contracting and Procurement (“OCP”), on behalf of the Office of Public-Private Partnerships, exercised Option Year One from April 3, 2018, through April 2, 2019, in the not-to-exceed amount of \$950,000.

(c) Modification No. 4 was an administrative modification.

(d) OCP now desires to increase the not-to-exceed amount for option years one and two of Contract No. CW50466 to \$1.45 million for the period April 3, 2018, through April 2, 2019.

(e) Council approval is necessary since this will increase the contract by more than \$1 million during a 12-month period.

(f) Approval is necessary to allow the continuation of these vital services. Without this approval, KPMG, LLP, cannot be paid for goods and services provided in excess of \$1 million for the period April 3, 2018, through April 2, 2019.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications to Contract No. CW50466 Approval and Payment Authorization Emergency Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-29

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 19, 2019

To declare the existence of an emergency with respect to the need to exempt the initial procurement contract entered into in connection with the Sports Wagering Lottery Amendment Act of 2018 and the Sports Wagering Lottery Emergency Amendment Act of 2018 from the requirements of the Procurement Practices Reform Act of 2010.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Sports Wagering Procurement Practices Reform Exemption Emergency Declaration Resolution of 2019”.

Sec. 2. (a) This emergency legislation will exempt the initial procurement contract entered into in connection with the Sports Wagering Lottery Amendment Act of 2018, enacted on January 23, 2019 (D.C. Act 22-594; 66 DCR 1402), and the Sports Wagering Lottery Emergency Amendment Act of 2018, effective January 30, 2019 (D.C. Act 22-630; 66 DCR 1745), from the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*). The procurement will be subject to the requirements that the contract be approved by Council if required by section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and that the contract meet or exceed CBE requirements.

(b) In June 2018, the United States Supreme Court, in *Murphy v. National Collegiate Athletic Association*, ___ U.S. ___, 138 S. Ct. 1461, 200 L. Ed. 2d 854 (2018), overturned the prohibition under the Professional and Amateur Sports Protection Act (PASPA) of states authorizing and licensing sports gambling and of private actors sponsoring, operating, or promoting sports gambling.

(c) As a result of the Court’s decision that jurisdictions are not prohibited from legalizing and regulating sports wagering, on December 18, 2018, the Council approved the Sports Wagering Lottery Amendment Act of 2018, enacted on January 23, 2019 (D.C. Act 22-594; 66 DCR 1402), and the Sports Wagering Lottery Emergency Amendment Act of 2018, effective January 30, 2019 (D.C. Act 22-630; 66 DCR 1745).

ENROLLED ORIGINAL

(d) To maximize revenues for the District of Columbia, job creation, and business revenues from sports wagering, it is important that the District leverage its first mover status in the region.

(e) To capitalize on the District’s first mover status, the Council has passed the Sports Wagering Procurement Practices Reform Exemption Act of 2019, passed on 2nd reading on February 19, 2019 (Enrolled version of Bill 23-25) (the “Permanent Act”).

(f) Emergency legislation that corresponds to the Permanent Act is necessary because the procurement for the initial sports-betting, lottery-gaming-systems and related-services contract must be conducted in an expedited manner that is exempt from the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), so that the Office of Lottery and Gaming expeditiously may begin preparing to regulate and operate sports wagering in the District.

(g) An extended request-for-proposals process would delay implementation of sports wagering by as many as 3 years, foregoing revenue and eliminating advantages of being an early adopter. The costs of delay include foregone economic activity and costs from shifting of the ramp-up in average wagering.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Sports Wagering Procurement Practices Reform Exemption Emergency Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF INTENT TO ACT ON NEW LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than **15 days**. Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after its introduction.

Interested persons wishing to comment may do so in writing addressed to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004 Telephone: 724-8050 or online at www.dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

PROPOSED RESOLUTION

PR23-125 Full-service Grocery Store Resolution of 2019

Intro. 2-19-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Grant Budget Modifications

Pursuant to the Consolidated Appropriations Act of 2017, approved May 5, 2017 (P.L. 115-31), the Council of the District of Columbia gives notice that the Mayor has transmitted the following Grant Budget Modification (GBM).

A GBM will become effective on the 15th day after official receipt unless a Member of the Council files a notice of disapproval of the request which extends the Council's review period to 30 days. If such notice is given, a GBM will become effective on the 31st day after its official receipt unless a resolution of approval or disapproval is adopted by the Council prior to that time.

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 5 Washington, D.C. 20004. Copies of the GBMs are available in the Legislative Services Division, Room 10.
Telephone: 724-8050

GBM 23-13: FY 2019 Grant Budget Modifications of January 16, 2019

RECEIVED: 14-day review begins February 27, 2019

GBM 23-14: FY 2019 Grant Budget Modifications of January 28, 2019

RECEIVED: 14-day review begins February 27, 2019

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**NOTICE OF PUBLIC HEARING**

Placard Posting Date: March 1, 2019
Protest Petition Deadline: April 15, 2019
Roll Call Hearing Date: April 29, 2019

License No.: ABRA-060737
Licensee: Jo Jo Development Inc.
Trade Name: Jo Jo Restaurant & Bar
License Class: Retailer's Class "C" Restaurant
Address: 1518 U Street, N.W.
Contact: Benyam Kibour: (202) 232-9120

WARD 2

ANC 2B

SMD 2B09

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on April 29, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests to change the hours of Live Entertainment for inside the premises.

CURRENT HOURS OF OPERATION INSIDE PREMISES

Sunday through Thursday 10am – 2am, Friday and Saturday 10am – 3am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION INSIDE PREMISES

Sunday through Thursday 10am – 1am, Friday and Saturday 10am – 2am

CURRENT HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES

Sunday 8pm – 1am, Monday n/a, Tuesday through Thursday 8pm – 1am, Friday and Saturday 9pm – 2am

PROPOSED HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES

Sunday through Thursday 6pm – 1am, Friday and Saturday 6pm – 2am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: March 1, 2019
Protest Petition Deadline: April 15, 2019
Roll Call Hearing Date: April 29, 2019
Protest Hearing Date: June 26, 2019

License No.: ABRA-112800
Licensee: Tamak SPN, LLC
Trade Name: TBD
License Class: Retailer's Class "C" Restaurant
Address: 750 9th Street, N.W.
Contact: Sidon Yohannes: (202) 686-7600

WARD 2

ANC 2C

SMD 2C01

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on April 29, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. **The Protest Hearing date is scheduled on June 26, 2019 at 1:30 p.m.**

NATURE OF OPERATION

A restaurant that will serve Spanish food with an East Asian influence. Interior seating for 200, with a Total Occupancy Load of 230.

HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION

Sunday through Saturday 11am – 12am

HISTORIC PRESERVATION REVIEW BOARD
NOTICE OF RESCHEDULED PUBLIC HEARING

This is notice that the D.C. Historic Preservation Review Board has rescheduled its public hearing to consider an application to designate the following property a historic landmark in the D.C. Inventory of Historic Sites. The Board will also consider the nomination of the property to the National Register of Historic Places:

Case No. 19-02: Safeway Grocery Store
4865 MacArthur Boulevard NW
Square 1389, Lot 25
Affected Advisory Neighborhood Commission: 3D
Applicant: NAI Saturn Eastern LLC (property owner)

Initially scheduled for February 28, the hearing has been continued to **9:00 a.m. on Thursday, March 7, 2019**, at 441 Fourth Street, NW (One Judiciary Square), in Room 220 South. It will be conducted in accordance with the Review Board's Rules of Procedure (10C DCMR 2). A copy of the rules can be obtained from the Historic Preservation Office at 1100 4th Street SW, Suite E650, Washington, DC 20024, or by phone at (202) 442-8800, and they are included in the preservation regulations which can be found on the Historic Preservation Office website.

The Board's hearing is open to all interested parties or persons. Public and governmental agencies, Advisory Neighborhood Commissions, property owners, and interested organizations or individuals are invited to testify before the Board. Written testimony may also be submitted prior to the hearing. All submissions should be sent to the address above.

For each property, a copy of the historic designation application is currently on file and available for inspection by the public at the Historic Preservation Office. A copy of the staff report and recommendation will be available at the office five days prior to the hearing. The office also provides information on the D.C. Inventory of Historic Sites, the National Register of Historic Places, and Federal tax provisions affecting historic property.

If the Historic Preservation Review Board designates a property, it will be included in the D.C. Inventory of Historic Sites, and will be protected by the D.C. Historic Landmark and Historic District Protection Act of 1978. The Review Board will simultaneously consider the nomination of the property to the National Register of Historic Places. The National Register is the Federal government's official list of prehistoric and historic properties worthy of preservation. Listing in the National Register provides recognition and assists in preserving our nation's heritage. Listing provides recognition of the historic importance of properties and assures review of Federal undertakings that might affect the character of such properties. If a property is listed in the Register, certain Federal rehabilitation tax credits for rehabilitation and other provisions may apply. Public visitation rights are not required of owners. The results of listing in the National Register are as follows:

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects:
Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow the Advisory Council on Historic Preservation an opportunity to comment on all projects

affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

Eligibility for Federal Tax Provisions: If a property is listed in the National Register, certain Federal tax provisions may apply. The Tax Reform Act of 1986 (which revised the historic preservation tax incentives authorized by Congress in the Tax Reform Act of 1976, the Revenue Act of 1978, the Tax Treatment Extension Act of 1980, the Economic Recovery Tax Act of 1981, and the Tax Reform Act of 1984) provides, as of January 1, 1987, for a 20% investment tax credit with a full adjustment to basis for rehabilitating historic commercial, industrial, and rental residential buildings. The former 15% and 20% Investment Tax Credits (ITCs) for rehabilitation of older commercial buildings are combined into a single 10% ITC for commercial and industrial buildings built before 1936. The Tax Treatment Extension Act of 1980 provides Federal tax deductions for charitable contributions for conservation purposes of partial interests in historically important land areas or structures. Whether these provisions are advantageous to a property owner is dependent upon the particular circumstances of the property and the owner. Because the tax aspects outlined above are complex, individuals should consult legal counsel or the appropriate local Internal Revenue Service office for assistance in determining the tax consequences of the above provisions. For further information on certification requirements, please refer to 36 CFR 67.

Qualification for Federal Grants for Historic Preservation When Funds Are Available: The National Historic Preservation Act of 1966, as amended, authorizes the Secretary of the Interior to grant matching funds to the States (and the District or Columbia) for, among other things, the preservation and protection of properties listed in the National Register.

Owners of private properties nominated to the National Register have an opportunity to concur with or object to listing in accord with the National Historic Preservation Act and 36 CFR 60. Any owner or partial owner of private property who chooses to object to listing must submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, and objects to the listing. Each owner or partial owner of private property has one vote regardless of the portion of the property that the party owns. If a majority of private property owners object, a property will not be listed. However, the State Historic Preservation Officer shall submit the nomination to the Keeper of the National Register of Historic Places for a determination of eligibility for listing in the National Register. If the property is then determined eligible for listing, although not formally listed, Federal agencies will be required to allow the Advisory Council on Historic Preservation an opportunity to comment before the agency may fund, license, or assist a project which will affect the property. If an owner chooses to object to the listing of the property, the notarized objection must be submitted to the above address by the date of the Review Board meeting.

For further information, contact Tim Dennee, Landmarks Coordinator, at 202-442-8847.

**DISTRICT OF COLUMBIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

NOTICE OF PUBLIC HEARINGS

Polly Donaldson, Director of the Department of Housing and Community Development, (DHCD) and the Department’s senior staff will host two **“Needs Assessment and Fair Housing”** Hearings.

Wednesday, March 20, 2019 ~ 6:30 pm

Petworth DC Public Library
4200 Kansas Ave NW, Washington, DC 20011
(Georgia Ave/ Petworth Metro Station)

Thursday, March 28, 2019 ~ 6:30 pm

All Souls Unitarian Church
1500 Harvard St NW, Washington, DC 20009
(Columbia Heights Metro Station)

The Needs Assessment hearings will help form a basis for developing the District’s draft **“District of Columbia Fiscal Year 2020 Annual Action Plan”** and the spending priorities utilizing federal entitlement funds. This year’s hearings DHCD will be discussing the District of Columbia’s efforts to spend federal funds, and citizen’s concerns about fair housing in the city.

Residents and stakeholders are strongly encouraged to come out and participate in the development of policies and programs in the following areas: **1)** affordable housing; **2)** special needs housing; **3)** homelessness; **4)** homeownership; and **5)** community development and public service activities. In addition, DHCD is interested in receiving community feedback regarding Fair Housing Impediments in the District of Columbia as part of its efforts to affirmatively further fair housing and its 2012-2017 Analysis of Impediments to Fair Housing Choice (AI).

District of Columbia residents who would like to present oral testimony are encouraged to register in advance either by email at dhcd.events@dc.gov or by calling Tilla Hall (202) 442-7239. Please provide your name, address, telephone number, and organization affiliation, if any.

Telecommunications Device for the Deaf (TDD) relay service is available by calling (800) 201-7165. A sign language interpreter will be provided upon request by calling Tilla Hall (202) 442-7239 five days prior to the hearing date.

Residents who require language interpretation should specify which language (Spanish, Vietnamese, Chinese-Mandarin/Cantonese, Amharic, or French). Interpretation services will be provided to pre-registered persons only. The deadline for requesting services of an interpreter is five days prior to both the hearings date. The deadline for the March 20th hearing is March 13th,

2019. The deadline for the March 28th hearing is March 21st, 2019. Bilingual staff will provide services on an availability basis to walk-ins without registration.

Written statements may be submitted for the record at the hearings, or until close of business, Friday, May 31st, 2019. Mail written statements to: Polly Donaldson, Director, DHCD, 1800 Martin Luther King Jr., Avenue SE, Washington, DC 20020. Statements can also be sent via email at opm.questions@dc.gov.

**DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING
NOTICE OF PUBLIC HEARING**

1050 First Street, NE, Suite 801, Washington, DC 20002

**COMMISSIONER STEPHEN C. TAYLOR
DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**

ANNOUNCES A PUBLIC HEARING

on

**THE STATE OF THE PRIVATE PASSENGER AUTOMOBILE
INSURANCE MARKET IN THE DISTRICT OF COLUMBIA**

Monday, March 25, 2019, 5:30 p.m.

**One Judiciary Square
441 4th Street, NW
Old Council Chambers
Washington, DC 20001**

Stephen C. Taylor, Commissioner of the Department of Insurance, Securities and Banking (Department), hereby gives notice of his intent to conduct a public hearing to serve as a follow-up to the Public Hearing held on January 30, 2018 to review private passenger automobile insurance premiums and rating factors. The hearing will be held at 5:30 p.m. on Monday, March 25, 2019 at One Judiciary Square, 441 4th Street, NW, Washington, DC 20001, in the Old Council Chambers.

The purpose of the public hearing is to examine the causes that have resulted in large increases in premium rates for automobile insurance in the District in recent years. The hearing also will cover several issues related to automobile insurance, including the use of sophisticated models as the basis for developing rates and rating classification, affordability of automobile insurance premiums in the District, the transparency of information available to consumers when purchasing automobile insurance, the impact of changing technologies on automobile insurance, and the competitiveness of the District's automobile insurance market. Finally, the hearing will explore the feasibility of establishing standard or low-cost automobile insurance policies.

The Department invites the public to testify or submit written testimony. Any person or organization wishing to testify at the hearing should contact the Department via email at philip.barlow@dc.gov or on (202) 442-7823, by 5:00 p.m. on Friday, March 22, 2019 to have their names added to the witness list. Each witness should provide their name, telephone number, email address (if any), organizational affiliation (if any) and title (if any). Written statements should be sent to the email address above or mailed to the Department at District of Columbia Department of Insurance, Securities and Banking, 1050 First Street, NE, Suite 801, Washington, DC 20002, Attention: Philip Barlow.

Representatives of organizations will be allowed to speak for a maximum of five minutes and individuals will be allowed a maximum of three minutes. Witnesses are requested to bring five copies of their written testimony.

If a party or witness is deaf, has a hearing impediment, or otherwise cannot readily understand or communicate in English, the party or witness may apply to the Department for the appointment of a qualified interpreter no later than March 18, 2019. In addition, if any witness to be called requires other special accommodations, please contact Mr. Barlow on (202) 442-7823 at least three (3) business days prior to the hearing.

**BOARD OF ZONING ADJUSTMENT
REVISED PUBLIC HEARING NOTICE
WEDNESDAY, APRIL 10, 2019**

441 4TH STREET, N.W.

**JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

TIME: 9:30 A.M.

WARD ONE

19952
ANC 1B **Application of Atlantic Residential A, LLC.**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 1500.3(c), to permit a rooftop bar and lounge in the penthouse of the existing mixed use building in the MU-10 Zone at premises 2112 8th Street N.W. (Square 2875, Lot 1109).

WARD ONE

19953
ANC 1B **Application of Atlantic Residential C, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the penthouse requirements Subtitle C § 1500.3(c), to permit a rooftop bar and lounge use in an existing mixed-use building in the MU-10 Zone at premises 945 Florida Avenue N.W. (Square 2873, Lot 799).

WARD ONE

19955
ANC 1B **Application of Atlantic Residential C, LLC**, pursuant to 11 DCMR 3104.1, for a special exception under §2204.13 from the loading requirements of §§2204.8, 2204.9 and 2204.10, to permit flexible/non-loading use of three of the existing loading docks in an existing mixed-use building in the MU-10 Zone at premises 945 Florida Avenue N.W. (Square 2873, Lot 799).

WARD SEVEN

19962
ANC 7D **Application of District Properties.com**, pursuant to 11 DCMR Subtitle X, Chapter 10, for area variances from the lot dimension requirements of Subtitle D § 302.1, the side yard requirements of Subtitle D §§ 307.1 and 307.4, to construct a new detached principal dwelling in the R-2 Zone at premises 917 43rd Place N.E. (Square 5096, Lot 20).

BZA PUBLIC HEARING NOTICE

APRIL 10, 2019

PAGE NO. 2

WARD SEVEN

19963
ANC 7C

Application of District Properties.com, pursuant to 11 DCMR Subtitle X, Chapter 10, for area variances from the lot dimension requirements of Subtitle D § 302.1, and the side yard requirements of Subtitle D § 307.1, to construct a new detached principal dwelling unit in the R-2 Zone at the premises at 5705 Eads Street N.E. (Square 5228, Lot 19).

WARD FIVE

19967
ANC 5C

Application of District Properties.com, pursuant to 11 DCMR Subtitle X, Chapter 10, for area variances from the lot dimension requirements of Subtitle D § 302.1, and the side yard requirements of Subtitle D § 307.1, to construct a new detached principal dwelling unit in the R-1-B Zone at the premises at 2429 Girard Place, N.E. (Parcel 155/9).

WARD SEVEN

19968
ANC 7F

Application of District Properties.com, pursuant to 11 DCMR Subtitle X, Chapter 10, for area variances from the lot dimension requirements of Subtitle D § 302.1, and the side yard requirements of Subtitle D § 307.1, to construct a new detached principal dwelling unit in the R-2 Zone at the premises at 4461 B Street S.E. (Square 5351, Lot 62).

WARD EIGHT

19971
ANC 8D

Application of GRID Alternatives Mid-Atlantic for the District of Columbia, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U §§ 420.1(a) and 203.1(p), to permit the installation of a community solar facility in the RA-1 Zone at premises South Capitol Street, S.E. (Square 6274, Lots 800, 801, 802).

BZA PUBLIC HEARING NOTICE

APRIL 10, 2019

PAGE NO. 3

WARD SIX

19976 **Application of Paul and Rosie Nathanson**, pursuant to 11 DCMR
ANC 6B Subtitle X, Chapter 10, for an area variance from the lot occupancy
 requirements of Subtitle U § 304.1, to construct a one story rear addition
 and a two story accessory building to an existing attached principal
 dwelling unit in the RF-1 Zone at premises 124 11th Street S.E. (Square
 989, Lot 38).

PLEASE NOTE:

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person’s interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.*** This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning’s website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

**Note that party status is not permitted in Foreign Missions cases.*

Do you need assistance to participate?

Amharic

ለመከተሉ ዕርዳታ ያስፈልግዎታል?

የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጓሚ)

ካስፈለገዎት እባክዎን ከሰብሰባ ወላጆች ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-

0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

BZA PUBLIC HEARING NOTICE

APRIL 10, 2019

PAGE NO. 4

Chinese

您需要有人帮助参加活动吗？

如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件

Zelalem.Hill@dc.gov。这些是免费提供的服务。French

Avez-vous besoin d'assistance pour pouvoir participer ? Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

Korean

참여하시는데 도움이 필요하세요?

특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish

¿Necesita ayuda para participar?

Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Vietnamese

Quý vị có cần trợ giúp gì để tham gia không?

Nếu quý vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

**FREDERICK L. HILL, CHAIRPERSON
LESYLLEÉ M. WHITE, MEMBER
LORNA L. JOHN, MEMBER
CARLTON HART, VICE-CHAIRPERSON,
NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, APRIL 24, 2019
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

TIME: 9:30 A.M.

WARD FIVE

19975 **Application of Warner Capital LLC**, pursuant to 11 DCMR Subtitle X, ANC 5B Chapter 9, for a special exception under the use provisions of Subtitle U § 513.1(a) to permit the expansion of an existing animal care and boarding facility to an adjacent lot in the MU-4 Zone at premises 3509-3511 12th Street N.E. (Square 3928, Lots 45, 46).

WARD ONE

19978 **Application of Robert Thorsen**, pursuant to 11 DCMR Subtitle X, ANC 1B Chapter 9, for special exceptions under Subtitle E § 5108 from the height requirements of Subtitle E § 5102.1, the alley centerline setback requirements of Subtitle E § 5106.1, and the minimum pervious surface provisions set forth under E § 5107.1, and under Subtitle E §§ 5108 and 5204 from the rear yard requirements of Subtitle E § 5104.1, and the side yard requirements of Subtitle E § 5105.1, to construct a second-story addition to an existing alley lot structure and convert it to a detached principal dwelling unit in the RF-1 Zone at premises 775 Fairmont Street, N.W. (Square 2885, Lot 862).

WARD SIX

19979 **Application of Nadia Shash**, pursuant to 11 DCMR Subtitle X, Chapter 9, ANC 6C for a special exception under Subtitle F § 5201 from the lot occupancy requirements of Subtitle F § 304.1, to construct a three-story rear addition to an existing, attached principal dwelling unit in the RF-1 Zone at premises 414 Constitution Avenue N.W. (Square 814, Lot 803).

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WARD TWO

19987
ANC 2E **Application of Edward Prince Jr.**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201, from the lot occupancy requirements of D § 1204 in order to construct a new rear accessory building to an existing principal attached dwelling in the R-20 Zone at premises 2802 P Street N.W. (Square 1259, Lot 211).

WARD SIX

19989
ANC 6A **Application of Ryan Aires**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201, from the nonconforming structure requirements of Subtitle C § 202.2; the lot occupancy requirements of Subtitle E § 304.1; and the minimum rear yard setback requirements of Subtitle E § 306.1; to construct a two-story rear addition to an existing principal dwelling unit in the RF-1 Zone at premises 1433 G Street N.E. (Square 1051, Lot 154).

WARD THREE

19994
ANC 3E **Application of Diane Sullivan**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201, from the lot occupancy requirements of Subtitle D § 304.1, to construct a three-story rear addition, to an existing three-story, semi-detached principal dwelling unit in the R-2 Zone at premises 5332 Belt Road N.W. (Square 1742, Lot 75).

WARD SIX

19995
ANC 6C **Application of Carl Holden and Amanda Parks**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1, and under Subtitle E §§ 205.5 and 5201 from the rear yard requirements of Subtitle E § 205.4, to construct a rear addition to an existing attached principal dwelling unit in the RF-1 Zone at premises 639 Lexington Place, N.E. (Square 862, Lot 126).

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PLEASE NOTE:

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person’s interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.*** This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning’s website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

**Note that party status is not permitted in Foreign Missions cases.*

Do you need assistance to participate?

Amharic

ለመካተፍ ዕርዳታ ያስፈልግዎታል?

የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጓሚ)

ካስፈለገዎት እባክዎን ከስብሰባው አጭነት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-

0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡ በነጻ ነው።

Chinese

您需要有人帮助参加活动吗?

如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件

Zelalem.Hill@dc.gov。这些是免费提供的服务。

French

Avez-vous besoin d’assistance pour pouvoir participer ? Si vous avez besoin d’aménagements spéciaux ou d’une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

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Korean

참여하시는데 도움이 필요하세요?

특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish

¿Necesita ayuda para participar?

Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Vietnamese

Quý vị có cần trợ giúp gì để tham gia không?

Nếu quý vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

**FREDERICK L. HILL, CHAIRPERSON
LESYLLEÉ M. WHITE, MEMBER
LORNA L. JOHN, MEMBER
CARLTON HART, VICE-CHAIRPERSON,
NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF RESCHEDULED¹ PUBLIC HEARING**

TIME AND PLACE: **Thursday, April 11, 2019 @ 6:30 p.m.**
Office of Zoning Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 18-20 (Forest City SEFC, LLC - “Parcel I” in the Southeast Federal Center (Square 744, part of Lot 807))

THIS CASE IS OF INTEREST TO ANC 6D

On October 12, 2018, the Office of Zoning received an application from Forest City SEFC, LLC (“Applicant”). The Applicant is requesting design review approval pursuant to 11-K §§ 202.2, 241, and 242 and related zoning relief of a proposed development on the property commonly known as “Parcel I” of the Yards (a portion of Lot 807 in Square 744, the “Property”). The Property is located in the SEFC-1B zone.

The Property consists of a lot in the 42-acre site formerly known as the Southeast Federal Center and now known as The Yards. Parcel I is bounded by N Street, S.E. on the north, Canal Street, S.E. on the east, and N Place, S.E. on the south. Parcel I consists of approximately 55,041 square feet of land area. Parcel I will be located on a single lot of record with Parcel H. Parcel I will be bounded by the future 1 ½ Street on the west, which will divide Parcel I from Parcel H. (Both Parcel H and Parcel I are currently improved with a surface parking lot.)

The Applicant proposes to develop Parcel I with a mixed-use development containing approximately 348 residential units, approximately 13,600 square feet of retail space, and approximately 243 parking spaces (the “Project”). The Project will have a maximum height of 110 feet. The Applicant also requests special exception relief from the penthouse setback requirements. Relief from the green area ratio requirements is also requested to accommodate the interim condition until the development of Parcel H. Concurrent with the Project, the Applicant will also build out the first phase of the street network within this portion of The Yards.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, Subtitle Z, Chapter 4.

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

¹ This case was previously scheduled for hearing on March 21, 2019.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of Subtitle Z § 404.1.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

Except for an affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than 14 days prior to the date set for the hearing, or 14 days prior to a scheduled public meeting if seeking advanced party status consideration, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning's website at: <http://dcoz.dc.gov/services/app.shtm>.** This form may also be obtained from the Office of Zoning at the address stated below.

Subtitle Z § 406.2 provides that the written report of an affected ANC shall be given great weight if received at any time prior to the date of a Commission meeting to consider final action, including any continuation thereof on the application, and sets forth the information that the report must contain. Pursuant to Subtitle Z § 406.3, if an ANC wishes to participate in the hearing, it must file a written report at least seven days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail (donna.hanousek@dc.gov), or by calling (202) 727-0789.

The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

- | | | |
|----|----------------------------------|-------------------------|
| 1. | Applicant and parties in support | 60 minutes collectively |
| 2. | Parties in opposition | 60 minutes collectively |
| 3. | Organizations | 5 minutes each |
| 4. | Individuals | 3 minutes each |

Pursuant to Subtitle Z § 408.4, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to

zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, ROBERT E. MILLER, PETER SHAPIRO, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

Do you need assistance to participate? If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or Zelalem.Hill@dc.gov five days in advance of the meeting. These services will be provided free of charge.

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Quý vị có cần trợ giúp gì để tham gia không? Nếu quý vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

ለመከተል ዕርዳታ ያስፈልግዎታል? የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጓጃ) ካስፈለገዎት እባክዎን ከስብሰባው አግኝት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነዚህ አገልግሎቶች የሚሰጡት በነጻ ነው።

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF RESCHEDULED¹ PUBLIC HEARING**

TIME AND PLACE: **Thursday, May 9, 2019, @ 6:30 p.m.**
Office of Zoning Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 18-22 (Forest City SEFC, LLC – Design Review of “Parcel G” in the Southeast Federal Center (Square 743, Lot 94))

THIS CASE IS OF INTEREST TO ANC 6D

On December 12, 2018, the Office of Zoning received an application from Forest City SEFC, LLC (“Applicant”). The Applicant is requesting design review and related zoning relief of a proposed development on the property commonly known as “Parcel G” of the Yards (Lot 94 in Square 743, the “Property”). The Property is located in the SEFC-1A zone.

The Property consists of a lot in the 42-acre site formerly known as the Southeast Federal Center and now known as The Yards. Parcel G is **bounded by N Street, S.E. to the south, New Jersey Avenue, S.E. to the east, the future Quander Street to the north, and the future 1½ Street to the West.** Parcel G consists of approximately 39,029 square feet of land area and will be located on a single record lot with Parcels A and F and portions of the private street network.

Parcel G is currently improved with a temporary trapeze school building. The Applicant proposes to construct an 11-story mixed-use building containing approximately 284,844 square feet of office use on floors 1 through 11 plus a habitable penthouse with an additional 5,578 square feet of office space, approximately 14,140 square feet of retail, eating/drinking establishment, service and/or retail/office flex uses on the ground floor, and approximately 167 vehicle parking spaces in a below-grade garage. The primary use is anticipated to be a new office headquarters for a single office tenant.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, Subtitle Z, Chapter 4.

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

¹ The hearing for this case was previously scheduled for April 11, 2019.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of Subtitle Z § 404.1.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

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您需要有人帮助参加活动吗? 如果您需要特殊便利设施或语言协助服务(翻译或口译)·请在见面之前提前五天与 Zee Hill 联系·电话号码 (202) 727-0312, 电子邮件 Zelalem.Hill@dc.gov 这些是免费提供的服务。

Quý vị có cần trợ giúp gì để tham gia không? Nếu quý vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

ለመከተሉ ዕርዳታ ያስፈልግዎታል? የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጓሚ ካስፈለገዎት እባክዎን ከስብሰባው አጻጻፍ ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነዚህ አገልግሎቶች የሚሰጡት በነጻ ነው።

DEPARTMENT OF FORENSIC SCIENCES

NOTICE OF FINAL RULEMAKING

The Director of the Department of Forensic Sciences, pursuant to the authority set forth in the Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011 (D.C. Law 19-18; D.C. Official Code §§ 5-1501.01 *et seq.* (2012 Repl. & 2018 Supp.)) (“DFS Establishment Act”), and Mayor’s Order 2017-132, dated May 25, 2017, hereby adopts a new Chapter 40 (Department of Forensic Sciences) of Title 28 (Corrections, Courts, and Criminal Justice) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking defines the roles and responsibilities of the Department of Forensic Sciences’ Science Advisory Board and establishes the reporting requirements and complaint process for the Department of Forensic Sciences.

The Notice of Proposed Rulemaking was published October 6, 2017 at 64 DCR 9898. DFS received one comment, from Kate Mitchell in Councilmember Charles Allen’s Office, which noted mis-numbered citations; those were corrected, and no substantive changes were made.

Pursuant to Section 16 of the DFS Establishment Act (D.C. Law 19-18; D.C. Official Code §§ 5-1501.15 *et seq.* (2012 Repl. & 2018 Supp.)), the rules were reviewed by the D.C. Council and passively approved on December 7, 2018. These rules were adopted as final on December 7, 2018, and will be effective upon publication of this rulemaking on March 1, 2019.

A new Chapter 40, DEPARTMENT OF FORENSIC SCIENCES, is added to Title 28 DCMR, CORRECTIONS, COURTS, AND CRIMINAL JUSTICE, to read as follows:

CHAPTER 40 DEPARTMENT OF FORENSIC SCIENCES

- Sec.**
- 4000 GENERAL PROVISIONS**
- 4001 ANNUAL REPORT**
- 4002 COMPLAINT PROCESS**
- 4003 MISSION OF THE SCIENCE ADVISORY BOARD; MEETINGS**
- 4004 SPECIFIC DUTIES OF THE SCIENCE ADVISORY BOARD**
- 4005 MEMBERSHIP ON THE SCIENCE ADVISORY BOARD; ELECTION OF CHAIRPERSON**
- 4099 DEFINITIONS**

4000 GENERAL PROVISIONS

4000.1 The Department of Forensic Sciences (Department) was established pursuant to Section 3 of the Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011 (D.C. Law 19-18; D.C. Official Code § 5-1501.02) (DFS Establishment Act).

4000.2 The Department’s mission is to provide high-quality, timely, accurate, and reliable forensic science services with the use of best practices and best available

technology, a focus on unbiased science and transparency, and the goal of enhancing public safety.

4000.3 The Department’s Science Advisory Board (Board) was established pursuant to Section 12 of the DFS Establishment Act (D.C. Official Code § 5-1501.11) to perform the functions set out in Section 13 of the DFS Establishment Act (D.C. Official Code § 5-1501.12).

4000.4 An obligation of a Department employee under this chapter may be delegated to another Department employee with the approval of the Director. A Department employee is any person employed by the Department, including contractors, consultants, volunteers, and interns.

4001 ANNUAL REPORT

4001.1 The Director shall prepare an annual report on the activities of the Department as required by Section 5(a)(5) of the DFS Establishment Act (D.C. Official Code § 5-1501.04(a)(5)) and shall provide the report to the Mayor, the Council of the District of Columbia, and the Board. The report shall also be published on the Department’s website.

4001.2 The report shall include descriptions of strategic developments, operational developments, outreach developments, and planned future actions for the Department.

4002 COMPLAINT PROCESS

4002.1 A complaint that involves an allegation of professional negligence, misconduct, or erroneous identification of a person or other testing error that occurred in the provision of forensic science services at the Department may be made by any individual or entity.

4002.2

- (a) A complaint shall be filed with the Department using the Department’s Complaint/Inquiry Form, which is available on the Open Government page of the Department’s website (www.dfs.dc.gov).
- (b) The form shall be completed by the person making the complaint or by a person acting on behalf of the person making the complaint.
- (c) If the Department receives an oral complaint, the Department shall request that the complainant file the complaint using the Department’s Complaint/Inquiry Form. If the complainant refuses to do so, the Department shall reduce the oral complaint to writing by filling out the Department’s Complaint/Inquiry Form.

- (d) If the Department receives a written complaint that is not provided on the Department's Complaint/Inquiry Form, the Department shall transfer the complaint to the Department's Complaint/Inquiry Form.

4002.3 Upon receipt of a complaint by the Department, the following actions shall be taken:

- (a) The Department shall forward the complaint to the Deputy Director and General Counsel.
- (b) The Department shall acknowledge the complaint within two (2) business days of receipt, if contact information is provided for the complainant;
- (c) The Deputy Director and General Counsel shall, within five (5) business days after the complaint is received, complete an investigation of the complaint and determine whether further action is necessary.
- (d) If the complaint requires further action, the Department shall address the complaint through a Quality Corrective Action Report (QCAR), a Quality Preventative Action Report (QPAR), an employee investigation, or any other means deemed appropriate by the Deputy Director and General Counsel.
- (e)
 - (1) If a complaint results in a QCAR, the Department shall notify the Board within five (5) business days. The notification shall include a copy of the complaint, a written description of the investigation of the investigation of the complaint, and a copy of the QCAR.
 - (2) The Department is not required to send to the Board a complaint that does not result in a QCAR.
- (f) At each Board meeting, the Director shall report to the Board on all completed investigations. With respect to each completed investigation, the report shall include a summary of the underlying complaint conclusions from the investigation, and recommendations for any further action, if any.

4003 MISSION OF THE SCIENCE ADVISORY BOARD; MEETINGS

4003.1 The Science Advisory Board (Board) shall be responsible for assisting and advising the Department on providing high-quality, timely, accurate, and reliable forensic science services.

4003.2 Pursuant to Section 13 of the DFS Establishment Act (D.C. Official Code § 5-1501.12), the Board is responsible for:

- (a) Reviewing reports of allegations of professional negligence, misconduct, or misidentification or other testing error that occurred in the provision of forensic science services at the Department;
- (b) Periodically reviewing certain Department program standards, protocols, manuals, and procedures;
- (c) Reviewing certain matters and making recommendations to the Director regarding such matters; and
- (d) Advising the Director or the Mayor and Council, when it considers appropriate, on matters relating to the Department or forensic science.

4003.3

- (a) The Board shall hold at least four (4) regular meetings per year, as required by Section 12(f) of the DFS Establishment Act (D.C. Official Code § 5-1501.11(f)).
- (b) Additional meetings shall be held by the order of the Chairperson, or at the written request of the Director or of three (3) Board members, in accordance with Section 12(f) of the DFS Establishment Act (D.C. Official Code § 5-1501.11(f)).
- (c) An additional meeting may be held for any reason.

4003.4

The presence of a majority of the voting members of the Board shall constitute a quorum.

4003.5

- (a) The Board may create subcommittees as needed to assist in the performance of its duties.
- (b) Subcommittees may be formed at the recommendation of the Director of the Department or the Chairperson of the Board.
- (c) Each subcommittee shall elect a subcommittee leader, whose responsibility shall be to liaise between the Board and the subcommittee.
- (d) Subcommittees are not subject to District Open Meetings Act requirements unless a quorum of members of the Board participates in the meeting or teleconference.
- (e) The Board shall review each recommendation made by a subcommittee, and upon review of the recommendation, may adopt (in whole or in part, and with or without amendments) or reject the recommendation.

4003.6

- (a) The Board may appoint an advisor(s) to provide specialized or technical assistance if the Board determines that such expertise is appropriate to perform its functions. The advisor's service shall be voluntary and unpaid.
- (b) Any member of the Board may request that an advisor be appointed. The advisor must be approved by a majority vote of the Board before the advisor is appointed.
- (c) The advisor must be qualified to provide the requested assistance. An advisor is deemed qualified if a majority of the Board deems the advisor qualified to provide assistance in the requested field.

4003.7

- (a) Board members may communicate with each other on matters relating to the Department outside of Board meetings.
- (b) Board members may communicate in person, via teleconference, by electronic communication, or in any other fashion as deemed appropriate by the Board.
- (c) The Board must comply with the District Open Meetings Act if a quorum of its members communicates on matters relating to the Department in person or via teleconference outside of a Board meeting.
- (d) Written correspondence as contemplated in this section is not subject to District Open Meetings Act requirements, but shall be subject to the District's freedom of information act.

4003.8

- (a) Minutes shall be prepared for each meeting of the Board, as required by the Open Meetings Act.
- (b) Draft minutes shall be made available to the public three (3) business days after the conclusion of a meeting. Final minutes approved by the Board shall be made available within seven (7) business days after the meeting at which the minutes were approved. The Department or Board may redact the minutes where permitted by District or federal law.

4004**SPECIFIC DUTIES OF THE SCIENCE ADVISORY BOARD**

4004.1

If the Board receives a QCAR from the Department pursuant to Subsection 4002.3(d), the following actions shall be taken:

- (a) The Board shall complete its review of the QCAR within twenty (20) business days after it is received by the Board; provided, that if the Board determines that it needs additional time to complete its review, it may

request that the Director approve such additional time. The Board's request shall specify the additional time requested and the reason for the need for additional time, and the Director shall not unreasonably withhold approval of the request.

- (b) As part of its review, the Board shall determine whether it will make any recommendations to the Department on the QCAR or the matters that gave rise to the QCAR. The Board shall provide its recommendations or advice, if any, to the Department within the twenty (20) day period described in paragraph (a) of this subsection (or such longer period as may be approved by the Director pursuant to paragraph (a) of this subsection).
- (c) The Director shall review all recommendations made by the Board. If the Board provides recommendations to the Director within the twenty (20) day period (or such longer period of time as may be approved by the Director pursuant to paragraph (b) of this subsection), the Director may direct the QCAR to be modified to reflect the Board's recommendations.
- (d) The Board may provide recommendations on the complaint or the Department's investigation into the complaint at any point.
- (e) The Board is not required to comment on a complaint.
- (f) The Department shall keep a record of all QCARs and complaints submitted to the Board. The record shall be available to the Board upon request.

4004.2

- (a) The Board shall review and make recommendations, as necessary, to the Director on the topics enumerated in Section 13(4) of the DFS Establishment Act (D.C. Official Code § 5-1501.12(4)).
- (b) Individual Board members may also make recommendations to the Director, but such recommendations shall be considered to be made in the Board member's individual capacity not on behalf of the Board.
- (c) The Director shall review each recommendation of the Board and shall determine whether the recommendation will be adopted (in whole or in part, and with or without amendments), rejected, or further investigated by the Department.
- (d) At the first quarterly Board meeting that occurs at least ninety (90) days after the Board transmits a recommendation to the Director, the Director shall discuss the recommendation and the outcome of his or her review.

4004.3

- (a) The Board shall review program standards and protocols related to the Department's operations.
- (b) In performing such reviews, the Board may make recommendations regarding new scientific programs, protocols, and methods of testing; plans for the implementation of new program standards or protocols, continuing existing programs, improving existing programs, and eliminating unnecessary programs; and qualification standards and training requirements for scientific staff.
- (c) Upon request by the Director, the Board shall review specific program standards or protocols.
- (d) The Board shall review the program standards and protocols requested by the Director within ninety (90) days after the Director's request. The Board may make written recommendations to the Director based on the Board's review.

4004.4

- (a) At least once every three (3) years, the Board shall review all manuals and procedures referenced in Section 5(b) of the DFS Establishment Act (D.C. Official Code § 5-1501.04(b)) to determine whether modification of the manuals or procedures is desirable. In performing its review, the Board shall conduct a review of relevant scientific literature.
- (b) The chairperson of the Board shall be responsible for ensuring the Board performs such reviews.
- (c) At the first Board meeting of each three (3) year review period, and at the first Board meeting for the second and third year of each three (3) year review period, the Board shall determine what manuals and procedures it will review during the year.
- (d) At the end of each year in a review period, the Board shall hold an extra meeting specifically to discuss the results of its review and any modifications to the manuals or procedures that the Board may propose based on its review. The Board shall not be required to hold an extra meeting in a review year to discuss its review and modifications if it submits to the Director a report describing its review and recommendations (if any) no later than three (3) months before the end of the review year.
- (e) If the Department makes a substantial change to a manual or procedure during a three (3) year review period, the Department shall promptly notify the Board of the substantial change. For the purposes of this

provision, a substantial change is a significant modification, expansion, or reduction in the nature or scope of a manual or procedure

- (f) This section does not prohibit the Board from reviewing any of the manuals and procedures referenced in Section 5(b) of the DFS Establishment Act (D.C. Official Code § 5-1501.04(b)) multiple times within a three (3) year period.
- (g) The first three (3) year review period shall be from March 2016 to March 2019. Every three (3) years following the first three (3) year review period shall be deemed a review period.

4004.5

- (a) The Board shall advise the Mayor and Council of the District of Columbia on matters relating to the Department or forensic science where the Board deems it appropriate.
- (b) The Board may advise the Mayor and Council either in writing or orally.
- (c) The Board, prior to submitting a written report to the Mayor or Council, shall deliver a copy of a draft of the report to the Director who shall have forty-five (45) days to review, comment on, or respond to the draft report.

4005 MEMBERSHIP ON THE SCIENCE ADVISORY BOARD; ELECTION OF CHAIRPERSON

4005.1 As provided in Section 12(a) of the DFS Establishment Act (D.C. Official Code § 5-1501.11(a)), the Board is composed of nine (9) voting members, as well as the Director and Deputy Director of the Department as *ex officio*, non-voting members.

4005.2 The Board shall elect a chairperson from among its voting members, who shall serve for a term of one (1) year.

- (a) A chairperson may be re-elected by the Board to serve consecutive one (1) year terms.
- (b) No chairperson shall be permitted to serve for more than three (3) terms.

4099 DEFINITIONS

4099.1 For the purposes of this chapter, the following terms shall have the following meanings:

Chairperson – the Chairperson of the Board.

DFS Establishment Act – the Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011 (D.C. Law 19-18; D.C. Official Code §§ 5-1501.01 *et seq.*)

Director – the Director of the Department of Forensic Sciences.

Misconduct –an unacceptable or improper behavior that leads to a failure to meet expected standards of practice.

Open Meetings Act – the Open Meetings Act, effective March 9, 2016 (D.C. Law 18-350; D.C. Official Code §§ 2-571 - 2-580).

Professional negligence – the breach of professional duty through a violation of the standards of care.

QCAR – a Quality Corrective Action Report, which stems from a recommendation to correct a prior action on any function that has an analytical value that affected laboratory or work value.

QPAR – a Quality Preventative Action Report, which stems from a recommendation for improvement on any function that has an analytical value that affects laboratory or work value.

Testing error –a technical result or interpretation that is incorrect and which may have resulted in inaccurate conclusions being reported.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**NOTICE OF FINAL RULEMAKING****Z.C. Case No. 12-08B¹****(Text Amendment to 11 DCMR Subtitle K §§ 603, 612, and 614 – StE Zones)****January 28, 2019**

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Rep1.)), hereby gives notice of the adoption of amendments to Subtitle K (Special Purpose Zones) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR).

Description of Amendments

The text amendment amends 11-K DCMR § 603 to establish maximum building heights for the StE-2 zone (none are presently specified). The amendment also amends 11-K DCMR §§ 612 and 614 to permit emergency shelter use as a matter-of-right use in the StE-2 zone, with no numeric limitation as to persons housed; whereas, all other StE zones retain the current matter-of-right limit for emergency shelter uses at four (4) persons, with up to fifteen (15) permitted by special exception. Finally, the text amendment corrects (i) the first sentence of 11-K DCMR § 612.1 to fix a typographical error (singular for plural) and (ii) paragraph (m) of that subsection to replace an erroneous reference to a “Health Care” use category with a correct reference to the “Medical Care” use category.

Procedures Leading to Adoption of Amendments

The District of Columbia Office of Planning (OP) submitted a memorandum dated September 7, 2018 that served as a petition requesting the text amendment, which also served as OP’s supplemental filing. (Exhibit [“Ex.”]. 2.) The Commission accepted the memorandum and voted to set down the text at its September 17, 2018 public meeting.

OP submitted a hearing report dated November 21, 2018, recommending approval of the amendments with slight variations to the text stated in its September 7, 2018 memorandum. (Ex. 6.)

¹ For Office of Zoning tracking purposes, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 12-08B.

ANC 8C submitted a report dated November 2, 2018 in support of the amendments as enhancing the development of the St. Elizabeths East campus. The ANC report also authorized its chair, Mary Cuthbert, to represent the ANC to the Commission on this issue. (Ex. 7.)

A public hearing was scheduled for and held on December 3, 2018. At the hearing, Maxine Brown-Roberts represented OP in recommending approval of the text amendments. The only other witness was the authorized representative of ANC 8C, Mary Cuthbert. At the close of the hearing, upon the motion of Peter A. Shapiro, as seconded by Michael G. Turnbull, the Zoning Commission took **PROPOSED ACTION** to authorize a Notice of Proposed Rulemaking by a vote of **5-0-0** (Anthony J. Hood, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve; Robert E. Miller to approve by absentee ballot).

A Notice of Proposed Rulemaking for this case was published in the *D.C. Register* on December 14, 2018, at 65 DCR 13581. No comments were received.

The National Capital Planning Commission (NCPCC), through a delegated action dated December 21, 2018, found that the proposed text amendments would not be inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other federal interest. (Ex. 10.)

At a public meeting held on January 28, 2019, upon the motion of Peter A. Shapiro, as seconded by Michael G. Turnbull, the Zoning Commission took **FINAL ACTION** to adopt the amendments making no changes to the text as proposed by a vote of **4-0-1** (Anthony J. Hood, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve; Robert E. Miller, not present, not voting).

The following amendments to the text of Title 11 DCMR (Zoning Regulations of 2016) are adopted.

Chapter 6, SAINT ELIZABETHS EAST CAMPUS ZONES – STE-1 THROUGH STE-19, of Title 11-K DCMR, SPECIAL PURPOSE ZONES, is amended as follows:

Section 603, HEIGHT (STE), is amended as follows:

Table K § 603.1, MAXIMUM PERMITTED BUILDING HEIGHT, PENTHOUSE HEIGHT, AND PENTHOUSE STORIES, is amended to read as follows:

TABLE K § 603.1: MAXIMUM PERMITTED BUILDING HEIGHT, PENTHOUSE HEIGHT, AND PENTHOUSE STORIES

Zone	Maximum Building Height (ft.)	Maximum Penthouse Height	Maximum Penthouse Stories
StE-1	25	12 ft. except 15 ft. for penthouse mechanical space	1; Second story permitted for penthouse mechanical space
StE-2	Subtitle K § 603.3	12 ft. except 18 ft. 6 in. for penthouse mechanical space	1; Second story permitted for penthouse mechanical space
StE-3	... ²		

A new § 603.3 is added to read as follows:

603.3 The maximum permitted building height, not including the penthouse, for any portion of a building shall be as follows based on the building’s distance from the property line along Martin Luther King, Jr. Avenue:

- (a) For a distance of two hundred thirty feet (230 ft.) or less, the maximum permitted building height, not including the penthouse, shall be forty feet (40 ft.);
- (b) For a distance of more than two-hundred thirty feet (230 ft.) and less than five hundred sixty feet (560 ft.), the maximum permitted building height, not including the penthouse, shall be eighty feet (80 ft.); and
- (c) For a distance of five hundred sixty feet (560 ft.) or more, the maximum permitted building height, not including the penthouse, shall be ninety feet (90 ft.).

² The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

Paragraphs (j) and (m) of § 612.1 of § 612, USE PERMISSIONS (StE), are amended as follows:

612.1 The following use categories shall be permitted as a matter of right in all of the StE zones, except as limited in Subtitle K §§ 613 and 614, or if specifically prohibited by Subtitle K § 615:

(a) ...

(j) Emergency shelter uses that house no more than four (4) persons, not including resident supervisors or staff and their families, except in the StE-2 zone where no numeric limit applies;

...

(m) Medical Care;

Subsection 614.1 of § 614, USES PERMITTED BY SPECIAL EXCEPTION (StE), is amended as follows:

614.1 The uses in this section shall be permitted in the StE zones as a special exception if approved by the Board of Zoning Adjustment pursuant to the general standards of Subtitle X, the criteria set forth in Subtitle K § 615.2, and subject to applicable conditions of each section as stated below:

(a) Except as permitted as a matter of right in the StE-2 zone by Subtitle K § 612.1(j), emergency shelter uses for five (5) to fifteen (15) persons, not including resident supervisors or staff and their families, subject to the following conditions:

(1) ...

The text amendments shall become effective upon publication of this notice in the *D.C. Register*, that is on March 1, 2019.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY
NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

Limited Local Preferences Regarding Project-Based Units

The Board of Commissioners of the District of Columbia Housing Authority (DCHA), pursuant to the authority set forth in Sections 3 and 12 of the District of Columbia Housing Act of 1999 (the “Act”), effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code §§ 6-202, 6-211 (2018 Repl.)) hereby gives notices of the adoption of an emergency regulation to Section 6125 (Preferences for Placement Eligibility for Housing Choice Voucher Applicants) of Chapter 61 (Public Housing: Admission and Recertification) of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR).

Per D.C. Official Code § 2-505(c) emergency rulemakings are promulgated when the action is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals.

This emergency rulemaking action is necessary to respond to the urgent need to provide housing options for public housing options for public housing families who need to be transferred in accordance with the DCHA mandatory provisions, including those related redevelopment or comprehensive modernization of public housing site and those related to transfers necessary due to conditions which would threaten the health, safety, and welfare of the resident.

The emergency and proposed regulation creates a new Housing Choice Voucher Program (HCVP) limited local preference which authorizes DCHA to offer a project-based unit to a public housing resident whose unit qualifies for a mandatory transfer based on the condition of the unit, a public safety issue, or based on relocation for comprehensive modernization or redevelopment. Such preference would apply when DCHA determines there are no other appropriate public housing units, or DCHA-controlled Rental Assistance Demonstration (RAD) units.

This rulemaking action was approved by the Board of Commissioners on February 13, 2019, and became effective immediately. This rule will expire one hundred and twenty (120) days from the date of adoption, June 13, 2019, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first. The Board of Commissioners of DCHA also gives notice of intent to take rulemaking action to adopt these proposed regulations as final in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 61, PUBLIC HOUSING: ADMISSION AND RECERTIFICATION, of Title 14 DCMR, HOUSING is amended as follows:

Section 6125, PREFERENCES FOR PLACEMENT ELIGIBILITY FOR HOUSING CHOICE VOUCHER APPLICANTS, is amended as follows:

A new Subsection 6125.16 is created to read as follows:

6125.16 Limited Local Preferences Regarding Project-Based Units.

- (a) § 6125 of Title 14 of the District of Columbia Municipal Regulations in order to establish a limited local preference to authorize DCHA to offer a project-based unit to a current public housing resident in need of a mandatory transfer based on the condition of the unit in accordance with 14 DCMR Section 6401.1(a), a public safety concern under 14 DCMR 6401.1(c), or relocation required under 14 DCMR Sections 6401.1 (d) or (e) based on a substantial rehabilitation or modernization of a public housing unit or redevelopment of a public housing site. Such limited local preference is applicable in the event there are no other appropriate public housing units, or DCHA-controlled Rental Assistance Demonstration (RAD) units.
- (b) This limited local preference will prioritize these offers of project-based units after transfers among project-based units, but prior to applicants pulled from the Housing Choice Voucher waiting list. The residents must otherwise meet the income requirements and eligibility requirements of the Housing Choice Voucher Program and the tenant selection plan.

Interested persons are encouraged to submit comments regarding this Proposed Rulemaking to DCHA's Office of General Counsel. Copies of this Proposed Rulemaking can be obtained at www.dcregs.gov, or by contacting Edward Kane Jr. at the Office of the General Counsel, 1133 North Capitol Street, N.E., Suite 210, Washington, D.C. 20002-7599 or via telephone at (202) 535-2835. All communications on this subject matter must refer to the above reference title and must include the phrase "Comment to Proposed Rulemaking" in the subject line. There are two methods of submitting Public Comments:

1. Submission of comments by mail: Comments may be submitted by mail to the Office of the General Counsel, Attn: Edward Kane Jr., 1133 North Capitol Street, N.E., Suite 210, Washington D.C. 20002-7599.
2. Electronic Submission of comments: Comments may be submitted electronically by submitting comments to Edward Kane Jr. at: PublicationComments@dchousing.org.
3. No facsimile will be accepted.

Comment due date: April 1, 2019

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, MARCH 6, 2019
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Nick Alberti, Mike Silverstein,
James Short, Bobby Cato, Rema Wahabzadah

- Protest Hearing (Status)** **9:30 AM**
Case # 19-PRO-00006; ADBHS, LLC, t/a Electric Cool-Aid, 512 Rhode Island Ave NW, License #112294, Retailer CT, ANC 6E
Application for a New License
- Protest Hearing (Status)** **9:30 AM**
Case # 19-PRO-00003; DC Live, LLC, t/a Elevate, 15 K Street NE, License #100316, Retailer CT, ANC 6C
Substantial Change (Request to add a Sidewalk Café with 52 seats)
- Show Cause Hearing (Status)** **9:30 AM**
Case # 18-AUD-00087; Neighborhood Restaurant Group, XVIII, LLC, t/a Red Apron at Union Market, 1309 5th Street NE, License #91030, Retailer CR, ANC 5D
Failed to File Quarterly Statements
- Show Cause Hearing (Status)** **9:30 AM**
Case # 18-CMP-00169; Letena Ethiopian Restaurant, LLC, t/a Letena, 3100 14th Street NW, License #104754, Retailer CR, ANC 1A
Failed to have a Sidewalk Café Endorsement (Two Counts)
- Show Cause Hearing (Status)** **9:30 AM**
Case # 18-251-00202; FD, LLC, t/a Unity, 1936 9th Street NW, License, #109064, Retailer CT, ANC 1B
Failed to Preserve a Crime Scene, Interfered with an Investigation, Provided False or Misleading Information, Failed to Make a Copy of Settlement Agreement Immediately Accessible

Board's Calendar

March 6, 2019

Show Cause Hearing (Status) 9:30 AM

Case # 18-CMP-00233; 1345 Corporation, t/a The Big Hunt, 1345 Connecticut Ave NW, License #19333, Retailer CT, ANC 2B

No ABC Manager on Duty

Show Cause Hearing (Status) 9:30 AM

Case # 18-251-00197; PFM Restaurants LLC, t/a District Anchor, 1900 M Street NW, License #100517, Retailer CN, ANC 2B

Failed to have a Security Plan on File

Show Cause Hearing* 10:00 AM

Case #'s 18-CMP-00051, # 18-251-00095, # 18-251-00084 and # 18-251-00122; Green Island Heaven and Hell, Inc., t/a Green Island Café/Heaven & Hell, 2327 18th Street NW, License #74503, Retailer CT, ANC 1C

Failed to Comply with Board Order No. 2017-439(Four Counts)

Show Cause Hearing* 10:00 AM

Case # 18-CMP-00194; Yohannes A. Woldemichael, t/a Capitol Fine Wine and Spirits, 415 H Street NE, License #82981, Retailer A, ANC 6C

No ABC Manager on Duty

Show Cause Hearing* 11:00 AM

Case # 18-CMP-00204; Cavit Ozturk, t/a Café Divan, 1834 Wisconsin Ave NW License #60603, Retailer CR, ANC 2E

Failed to Take Steps Necessary to Ensure Property is Free of Litter, Substantial Change in Operation Without Board Approval

BOARD RECESS AT 12:00 PM

ADMINISTRATIVE AGENDA

1:00 PM

Fact Finding Hearing* 1:30 PM

Case # 18-251-00225; Roof Top DC, LLC, t/a Bar Deco, 717 6th Street NW License #97418, Retailer CR, ANC 2C

Simple Assault

Fact Finding Hearing* 2:00 PM

Case # 19-251-00002; G and G Investments, Inc., t/a Trio Rest & Fox & Hounds Lounge, 1537 17th Street NW, License #168, Retailer CR, ANC 2B

Aggravated Assault

Show Cause Hearing* 2:30 PM

Case # 18-CMP-00196; Stephen Lawrence, t/a 600 T, 600 T Street NW License #100515, Retailer CT, ANC 6E

Substantial Change in Operation Without Board Approval

Board's Calendar
March 6, 2019

Fact Finding Hearing*

3:30 PM

**Case # 18-251-00226; Jaime T. Carillo, t/a Don Jaime, 3209 Mt. Pleasant Street
NW, License #21925, Retailer CT, ANC 1D**

**Simple Assault, Assault with a Dangerous Weapon, Failed to Cooperate
with Investigators and Provided False or Misleading Information,**

***The Board will hold a closed meeting for purposes of deliberating these
hearings pursuant to D.C. Official Code §2-574(b)(13).**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CANCELLATION AGENDA

WEDNESDAY, MARCH 6, 2019
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board will be cancelling the following licenses for the reasons outlined below:

ABRA-110740 – **Laos in Town** – Retail – C – Tavern – 250 K Street NE
[Licensee is out of business and did not place the license in Safekeeping.]

ABRA-101295 – **Uni Bistro** – Retail – C – Restaurant – 403 H Street NE
[Licensee is out of business and did not place the license in Safekeeping.]

ABRA-098370 – **XO Restaurant & Lounge** – Retail – C – Tavern – 1426 L Street NW
[Licensee is out of business and did not place the license in Safekeeping.]

ABRA-023533 – **Lindy's Bon Appetit** – Retail – C – Restaurant – NW 2040 I Street NW
[Licensee is out of business and did not place the license in Safekeeping.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, MARCH 6, 2019 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Request to Extend Safekeeping of License – Sixth Request. Original Safekeeping Date: 6/8/2016. ANC 2E. SMD 2E05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. **TBD (Thor 3000 M Street LLC)**, 3000 M Street NW, Retailer CH, License No. 102572.
-

2. Review request for approval to provide gifts of tickets to Broccoli City Festival that do not exceed \$500 in value to various licensed DC Retailers. ANC 5C. SMD 5C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. **Breakthru Beverage**, 2800 V Street NE, Wholesaler A, License No. 060518.
-

***In accordance with D.C. Official Code §2-547(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

**EARLY CHILDHOOD ACADEMY PUBLIC CHARTER SCHOOL
REQUEST FOR PROPOSALS**

EARLY CHILDHOOD ACADEMY PUBLIC CHARTER SCHOOL (ECA) request proposals for:

- **New Commercial Play Equipment and Installation on Playground Space for School Facility Currently Under Construction** – experienced vendor needed for the sale and installation of commercial playground equipment and soft surfacing in new school facility. **Submission deadline:** ECA will receive bids until 4:00 pm on Friday, March 8, 2019.

For further information send email inquiries to bids@ecapcs.org.

DEPARTMENT OF ENERGY AND ENVIRONMENT**PUBLIC NOTICE****Proposed Air Quality Source Category Permit to Construct and Operate Temporary Portable Crusher or Screener Equipment**

Notice is hereby given that, pursuant to 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue a source category permit covering a subset of temporary portable crusher/screen/conveyor operations in the District of Columbia. This source category permit will be designated Permit No. 6886-SC-R1.

This source category permit will cover only portable crushers, screens, and conveyors processing nonmetallic minerals only, that will be in operation at a given site for no more than six months. This permit covers only units that are controlled with wet suppression (i.e. water spray) and that will operate for less than twelve hours per day. Engines associated with the equipment are required to operate using only gasoline or ultra-low sulfur diesel fuel.

The proposed overall emission limits for the equipment are as follows:

- a. Emissions of dust shall be minimized in accordance with the requirements of 20 DCMR 605 and the “Operational Limitations” of the permit.
- b. The emission of fugitive dust from any material handling, screening, crushing, grinding, conveying, mixing, or other industrial-type operation or process is prohibited. [20 DCMR 605.2]
- c. Emissions from the engine powering the crusher/screen shall not exceed those achieved by proper operation of the equipment in accordance with manufacturer’s specifications.
- d. Visible emissions shall not be emitted into the outdoor atmosphere from stationary sources; provided, that the discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, soot blowing, adjustment of combustion controls, or malfunction of the equipment. [20 DCMR 606.1]
- e. In addition to Condition (d), emissions from grinding mills, screening operations, bucket elevators, transfer points on belt conveyors, bagging operations, storage bins, enclosed truck or railcar loading stations shall not exceed 7% opacity. Emissions from crushers shall not exceed 12% opacity. [40 CFR 60, Subpart OOO, Table 3]
- f. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the

public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

- g. Emissions of PM₁₀ from all sources at the site shall not exceed 25 tons during the duration of operations of the unit at the site.
- h. Emissions of NO_x from all sources at the site shall not exceed 25 tons during the duration of operations of the unit at the site.

As a worst case, emissions from each unit are not expected to exceed the following:

	Maximum Annual Emissions
Pollutant	(tons/yr)
Particulate Matter (PM ₁₀)	2.40
Carbon Monoxide (CO)	4.56
Oxides of Nitrogen(NO _x)	20.33
Volatile Organic Compounds (VOC)	14.43
Sulfur Oxides (SO _x)	1.35

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington DC 20002
Stephen.Ours@dc.gov

No comments or hearing requests submitted after April 1, 2019 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

**DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES**

**NOTICE OF PUBLIC SURPLUS MEETING
PURSUANT TO D.C. OFFICIAL CODE §10-801
FOR 4650 BENNING ROAD SE,
KNOWN AS FLETCHER-JOHNSON MIDDLE SCHOOL**

The District will hold a public meeting to receive comments on the finding that certain District property identified below is no longer required for public purposes and the proposed surplus of such District property. The meeting will also involve a discussion of the proposed redevelopment plan for such District property.

The District property, date, time and location for the meeting are as follows:

Property: Fletcher-Johnson Middle School
4650 Benning Road SE
Washington, DC 20019
Lot 0802 in Square 5344

Date: Wednesday, March 20, 2019

Time: 6:30 pm –8:30 pm

Location: DC Scholars Public Charter School
5601 East Capitol Street SE
Washington, DC 20019

Should you have any questions regarding the foregoing, please contact Ikeogu Imo, Associate Director of DGS' Portfolio Management Division, at (202) 741-7742 or at Ikeogu.Imo@dc.gov.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
THE RENTAL HOUSING COMMISSION 2019 RESOLUTION

for

**THE CHANGE IN THE REGIONAL CONSUMER PRICE INDEX –
URBAN WAGE EARNERS AND CLERICAL WORKERS (CPI-W), FOR
ALL ITEMS;
THE SOCIAL SECURITY COST-OF-LIVING ADJUSTMENT;
THE MAXIMUM ANNUAL RENT INCREASE FOR ELDERLY
TENANTS AND TENANTS WITH A DISABILITY; and
THE QUALIFYING INCOME FOR EXEMPTION FROM CERTAIN
RENT INCREASES**

It is hereby resolved by the Rental Housing Commission (“Commission”) this 19th day of February, 2019:

1. Whereas, effective January 1998, the United States Department of Labor, Bureau of Labor Statistics (“BLS”), eliminated the publication “Washington, D.C. Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for All Items,” which included the District of Columbia and parts of the states of Maryland and Virginia, and initiated the publication “Consumer Price Index – Urban Wage Earners and Clerical Workers (CPI-W), Washington-Baltimore, D.C.-Md.-Va.-W.Va., All Items,” which includes the District of Columbia and parts of the states of Maryland, Virginia, and West Virginia in a consolidated metropolitan statistical area (“Washington-Baltimore CMSA”);
2. Whereas, effective April 2018, BLS eliminated the publication of the Washington-Baltimore CMSA and initiated the publication “CPI-Urban Wage Earners and Clerical Workers for All Items, Washington-Arlington-Alexandria, DC-VA-MD-WV,” which includes the District of Columbia and parts of Maryland, Virginia, and West Virginia in a core based statistical area (“Washington-Arlington-Alexandria CBSA”);
3. Whereas, pursuant to section 206(b) of the Rental Housing Act of 1985, effective July 18, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.06(b)) (“Act”), the Commission is mandated to determine the change, during the twelve months of calendar year 2017 in the Consumer Price Index for Urban Wage Earners and Clerical Workers (“CPI-W”) for all items in the statistical area that includes the District of Columbia;
4. Whereas, pursuant to the requirements of section 206(b) of the Act, the Commission used the BLS publication of the CPI-W for all items for calendar year 2018 in the Washington-Arlington-Alexandria CBSA;
5. Whereas, the Commission determined the calendar year 2018 change in the CPI-W for all items for the Washington-Arlington-Alexandria CBSA was 2.3%;

6. Whereas, pursuant to section 202(a)(3)(B) of the Act, the Commission shall additionally determine the current, annual cost-of-living adjustment (“COLA”) to the benefits of Social Security recipients as established pursuant to section 215(i) of the Social Security Act, approved August 28, 1950 (64 Stat. 506; 42 U.S.C. § 415(i));
7. Whereas, the Commission determined that the Social Security COLA established for calendar year 2019 is 2.8%;
8. Whereas, pursuant to section 202(a)(3)(C) of the Act, the Commission shall additionally determine the maximum annual adjustment in the rent charged for a rental unit occupied by an elderly tenant or a tenant with a disability that may be imposed by a housing provider in accordance with section 224(a) of the Act, which provides that the maximum rent adjustment shall be the least of: (a) the adjustment of general applicability, as determined by this resolution; (b) the Social Security COLA, as determined by this resolution; or (c) 5% of the current rent charged; and
9. Whereas, the Commission determined that, pursuant to section 224(a) of the Act, the maximum annual adjustment in the rent charged for a rental unit occupied by an elderly tenant or a tenant with a disability that may be imposed by a housing provider shall not exceed 2.3%;
10. Whereas, pursuant to section 202(a)(3)(D) of the Act, the Commission shall additionally determine the qualifying income for an elderly tenant or a tenant with a disability to be exempt from an adjustment in the rent charged as provided by section 224(b) of the Act, to include capital improvement surcharges, related service or facility increases, hardship surcharges, substantial rehabilitation surcharges, and voluntary agreement increases (“Qualifying Income”), based on the definition provided by section 2(1) of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801(1)) (“HPTF Act”), as 60% of the area median household income for four persons, utilizing the calculation published by the U.S. Department of Housing and Urban Development (“HUD”);
11. Whereas, the Commission determined that HUD estimates the area median household income to be \$117,200 for a household of four people, and the HPTF Act increases or decreases that amount by 10% per person in the household;
12. Be it therefore resolved, that, pursuant to the requirements of section 202(a)(3) of the Act, the Commission hereby certifies that:
 - (a) The rent adjustment of general applicability, to become effective on May 1, 2019, shall not exceed 2.3% of the legal rent charged for a rental unit on April 30, 2019;
 - (b) The annual adjustment in the rent charged for a rental unit occupied by an elderly tenant or a tenant with a disability shall not exceed 2.3% of the legal rent charged on April 30, 2019; and

- (c) The Qualifying Income for a household of four persons shall be \$70,320, plus or minus \$7,032 for each additional or fewer person in the household; and
13. Be it further resolved, that the Commission adopts the Certification and Notice of Rent Adjustment of General Applicability, effective May 1, 2019, in the form annexed hereto and directs its transmittal to the District of Columbia Office of Documents and Administrative Issuances for publication in the *District of Columbia Register*.

Michael Spencer

MICHAEL T. SPENCER, CHAIRMAN

Lisa M. Gregory

LISA M. GREGORY, COMMISSIONER

Rupa R. Puttagunta

RUPA R. PUTTAGUNTA, COMMISSIONER

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

CERTIFICATION AND NOTICE
OF
RENT ADJUSTMENT OF GENERAL APPLICABILITY AND
QUALIFYING INCOMES FOR RENT EXEMPTIONS

EFFECTIVE MAY 1, 2019

SUMMARY

If you are a tenant in or housing provider of a rent-controlled apartment or house:

- In general, a tenant’s rent should not go up by more than **4.3%** this year, unless the housing provider has special approval.
- If a tenant is 62 or older or has a disability, the rent should not go up by more than **2.3%**, unless the housing provider has special approval.
- If a tenant is 62 or older or has a disability *and* the annual household income is less than what’s listed in this notice (for example, **\$70,320 for a household of four** people), the tenant might not have to pay part of the rent if the housing provider got special approval for a rent increase.

Tenants and housing providers also have other rights and responsibilities under the law. This notice is only about specific limits that will take effect this year.

LEGAL NOTICE

- Pursuant to section 206(b) of the Rental Housing Act of 1985, effective July 18, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.06(b)) (“Act”), the Rental Housing Commission (“Commission”) shall determine a maximum allowable adjustment of general applicability in the rent charged in accordance with section 206(a) of the Act (D.C. Official Code § 42-3502.06(a)) for rental units covered by the Rent Stabilization Program,¹ which shall be equal to the change during the previous calendar year Consumer Price Index for Urban Wage Earners and Clerical Workers for All Items (“CPI-W”) in the Washington, D.C. statistical area.²

¹ The coverage of the Rent Stabilization Program is established by section 205(a)-(e) of the Act (D.C. Official Code § 42-3502.05(a)-(e)).

² The Rental Housing Commission and the Rent Administrator are mandated by Act to annually calculate and publish in the *District of Columbia Register* the percentage change in the “Washington, D.C., Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items.” D.C. Official Code §§ 42-3502.04(k), 42-3502.06(b). However, the Act does not reflect changes in the publication by the United States Department of Labor, Bureau of Labor Statistics (“BLS”), which publishes the CPI-W statistics and determines what cities, counties, and states are included in statistical areas. In 2018, BLS discontinued its prior

- Pursuant to section 206(b) of the Act, the Commission determined that the CPI-W for All Items in the Washington, D.C. statistical area increased by 2.3% during the previous calendar year.
- Pursuant to section 202(a)(3)(A) of the Act (D.C. Official Code § 42-3502.02(a)(3)(A)), the Commission hereby certifies and gives notice that **the rent adjustment of general applicability to become effective on May 1, 2019, shall not exceed 2.3% of the legal rent charged** for a covered rental unit on April 30, 2019.³
- Pursuant to section 202(a)(3)(B) of the Act (D.C. Official Code § 42-3502.02(a)(3)(B)), the Commission shall additionally determine the current, annual cost-of-living adjustment (“COLA”) to the benefits of Social Security recipients as established pursuant to section 215(i) of the Social Security Act, approved August 28, 1950 (64 Stat. 506; 42 U.S.C. § 415(i)).
- Pursuant to section 202(a)(3)(B) of the Act, the Commission determined that the Social Security COLA established for calendar year 2019 is 2.8%.⁴
- Pursuant to section 202(a)(3)(C) of the Act (D.C. Official Code § 42-3502.02(a)(3)(C)), the Commission shall additionally determine the maximum annual adjustment in the rent charged for a rental unit occupied by an elderly tenant or a tenant with a disability that may be imposed by a housing provider in accordance with section 224(a) of the Act (D.C. Official Code § 42-3502.24(a)),⁵ which provides that the maximum rent adjustment shall be the least of: (a) the adjustment of general applicability, as determined by this notice; (b) the Social Security COLA, as determined by this notice; or (c) 5% of the current rent charged.

publication, in use since 1998, and now includes the District of Columbia in “Washington-Arlington-Alexandria, DC-VA-MD-WV Core Based Statistical Area.” See <https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm>.

The BLS data on which the Commission relies is published with the Series ID CWURS35ASA0.

³ Pursuant to section 208(h)(2)(A) of the Act (D.C. Official Code § 42-3502.08(h)(2)(A)), except as provided for elderly tenants and tenants with a disability (without regard to income) and rental units leased or co-leased by a home and community-based services waiver provider, a housing provider may increase the rent charged for a rental unit by **an additional 2% above the adjustment of general applicability**.

⁴ See 83 Fed. Reg. 53702 (Oct. 24, 2018).

⁵ For the purpose of determining the maximum allowable rent increase under section 224(a) of the Act, the term “elderly tenant” means a tenant who is at least **62 years of age**, as defined by section 103(12) of the Act (D.C. Official Code § 42-3501.03(12)), and “tenant with a disability” means a tenant who has **a physical or mental impairment that substantially limits one or more major life activities**, as defined by section 103(36A) of the Act (D.C. Official Code § 42-3501.03(36A)) to incorporate the definition of “disability” provided by section 3(1)(A) of the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 329; 42 U.S.C. § 12102(1)(A)).

- Pursuant to section 202(a)(3)(C) of the Act, the Commission hereby certifies and gives notice that **the annual adjustment in the rent charged for a covered rental unit occupied by an elderly tenant or a tenant with a disability shall not exceed 2.3% of the legal rent charged** on April 30, 2019.
- Pursuant to section 202(a)(3)(D) of the Act (D.C. Official Code § 42-3502.02(a)(3)(C)), the Commission shall additionally determine the maximum qualifying income for an elderly tenant or a tenant with a disability to be exempt from certain rent surcharges and adjustments pursuant to section 224(b) and (i) of the Act (D.C. Official Code § 42-3502.25(b) & (i)),⁶ as 60% of the area median income, based on household size, in accordance with section 2(1) of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801(1)) (“HPTF Act”).⁷
- Pursuant to section 202(a)(3)(D) of the Act (D.C. Official Code § 42-3502.02(a)(3)(C)), the Commission hereby certifies and gives notice that **the maximum qualifying income for an elderly tenant or a tenant with a disability to be exempt from certain rent surcharges and adjustments shall be:**
 - For a household of one person, \$49,224;
 - For a household of two people, \$56,256;
 - For a household of three people, \$63,288;
 - For a household of four people, \$70,320; and
 - For a household of five people or more, \$77,352, plus \$7,032 for each additional person above five.

⁶ Subject to the availability of tax credits, as determined by the Chief Financial Officer of the District of Columbia, a housing provider may not charge an elderly tenant or tenant with a disability with a qualifying income any rent or rent surcharge approved in a capital improvement petition, related services and facilities petition, hardship petition, substantial rehabilitation petition, or voluntary agreement. D.C. Official Code § 42-3502.24(b), (g), & (i).

⁷ Section 2(1) of the HPTF Act (D.C. Official Code § 42-2801(1)) requires the use of data published by the U.S. Department of Housing and Urban Development (“HUD”). Annually, HUD publishes its calculation of median family income, and corresponding program income limits, in April, the midpoint of the fiscal year. *See* <https://www.huduser.gov/portal/datasets/il/il18/Medians-Methodology-FY18r.pdf>. However, section 202(a)(3)(C) of the Act (D.C. Official Code § 42-3502.02(a)(3)(C)) requires the Commission to publish its qualifying incomes by March 1 of each year. Accordingly, the Commission uses the latest-available income data from HUD as of the date this notice is published.

KIPP DC PUBLIC CHARTER SCHOOLS
REQUEST FOR PROPOSALS

Strategic Planning and Consulting Services

KIPP DC is soliciting proposals from qualified vendors for Strategic Planning and Consulting Services. The RFP can be found on KIPP DC's website at www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5:00 PM EST, on March 12, 2019. Questions can be addressed to erin.huseby@kippdc.org.

LAYC CAREER ACADEMY PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

LAYC Career Academy Public Charter School (LAYCCA) is seeking bids from prospective vendors to provide:

- Special Education Services

Proposals are due no later than 5:00 PM (5:00 PM EST) Friday, April 12, 2019. No proposals will be accepted after the deadline. Questions can be addressed to martha@laycca.org.

Details:

LAYC Career Academy is soliciting proposals for a one (1) year contract, with opportunity for renewal, for Special Education Services for our school. Vendors are required to submit written proposals that present the vendor's qualifications and understanding of the work to be performed. The vendor's proposal should be prepared simply and economically and should provide all the information it considers pertinent to its qualifications for the specifications listed herein. Emphasis should be placed on completeness of services offered and clarity of content.

The proposal must be submitted no later than 5:00 PM on April 12, 2019, to the following email address: martha@laycca.org, Attn: Request for Proposal for Special Education Services.

- a) Proposal Content - A completed proposal must contain the following:
 - Proposal with Signature – the proposal and signature must be completed and signed by an individual authorized to bind the vendor. All proposals submitted without a signature may be deemed non responsive.
 - References – Proposals shall include a list of two or three (2-3) references including name, address, phone number and contact person
- b) Proposal Period – Services are to start on August 26, 2019 for the 2019-2020 school year.
- c) Proposal Award - It is the intent of the school to accept the lowest responsible proposal, provided it has been submitted in accordance with the proposal documents. If a proposal is selected it will be the most advantageous regarding price, quality of service, the vendors qualifications and capabilities to provide the specified service, and other factors which LAYC Career Academy may consider. The school reserves the right to accept or reject any or all proposals and to waive irregularities therein

d) Term and Renewal – The term of the Contract shall be for one (1) year with renewal, unless earlier terminated. The Contract may be terminated by either party with a ninety (90) day written notice. The services are to start August 26, 2019.

e) Basis of Payment – Payment will be made to the contractor within 30 days upon receiving the contractor's monthly invoice. The invoice shall state the date the service was performed. Special services provided will be billed via a separate invoice and described by the service provided and the date it was provided.

Specifications

The scope of services shall include the ancillary support of students suspected of having a disability and students with disabilities as designated via their Individualized Educational Plans (IEPs). Ancillary and Related Services shall include, but may not be limited to, the following:

- Speech and language therapist
- Physical therapist
- Psychologist
- Behavioral support services
- Social worker
- Audiologists
- Others as needed

Responsibilities:

1. Provide professionally qualified personnel to perform the services which includes but is not limited to, conduct psychological, psycho-educational, speech and language assessments and other as needed, attending and participating in eligibility, re-evaluation, IEP and other MDT meetings necessary, consultations with parents, school personnel, staff development and LAYCCA staff.
2. Provide to LAYCCA a copy of each current license and/or certificate for persons conducting student assessment interventions; consultations and/or evaluations prior to rendering services. Proposer shall ensure that all licenses and certificates remain current throughout the life of any subsequent contract LAYCCA and a proposer may enter into.
3. Comply with all requirements mandated by the Individuals with Disabilities Education Act (IDEA), Family Education Rights & Privacy Act (FERPA), LAYCCA policies, as well as any other applicable state and federal laws related to the performance of both initial and re-evaluation of suspected student disability.
4. Ensure that all personnel providing services to students have undergone a criminal background check in accordance with any applicable state, federal, or local laws, prior to their commencement of services to LAYCCA.

5. Ensure the availability of evaluator to respond to any and all requests LAYC CA may have for student records and/or consultations.
6. Ensure that their staff maintains thorough records and provide required documentation in accordance with SPED local and federal laws.
7. Ensure evaluator/provider is trained in how to use and enter information into the Special Education Data System (SEDS). Enter and maintain all relevant information in SEDS including related services tracking notes, upload assessment reports, IEPs goals, progress and attendance notes, etc.

Pricing should be inclusive of all staffing, labor, and necessary supplies and external costs.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT**NOTICE OF FUNDING AVAILABILITY (NOFA)****FY19 Robust Retail Grant**

The Department of Small and Local Business Development (DSLBD) is soliciting applications for the **Robust Retail Grant**. DSLBD intends to award up to \$20,000 per business for a total of 20 businesses located within an eligible DC Main Street Program. This grant will provide working capital to help existing businesses adapt their business model and meet changing customer demand. It can also be used to help retail businesses (stores and restaurants) which may have been impacted by the Federal Shutdown. Only accredited DC Main Streets program are eligible to apply for this grant on behalf of businesses within their corridor.

How do I apply?

For additional guidance please see the Request for Applications (RFA) on the DSLBD website that will be released on or before February 28, 2019: <http://dslbd.dc.gov/service/current-solicitations-opportunities>.

Deadline

The deadline to apply online is **April 11, 2019 at 12:00 pm**. Applications will only be accepted through the online application system.

Who can apply?

Accredited DC Main Streets organizations. See the Request for Applications for additional eligibility requirements.

How can the funds be used?

This grant will provide working capital to help existing businesses to adapt their business model to meet changing customer demand. The grant period of performance will be October 1, 2018 through September 30, 2019. Examples of allowable and disallowed uses are detailed in the RFA linked to above.

How will awardees be selected?

Grant recipients will be selected through a competitive application process. All applications from eligible applicants received on or before the deadline will be forwarded to an independent review panel to be evaluated, scored, and ranked based on the following criteria:

1. Capacity and history of the applicant business (25 points)
2. Strength of the Project Implementation Plan (25 points)
3. Financial Viability of Applicant Organization (25 points)
4. Creativity and Innovation (25 points)

A DC Government team will review the recommendations. The Director of DLSBD will make the final determination of grant awards. Grantees will be selected by April 25, 2019.

Questions?

We encourage interested applicants to attend an *Application Information Session*. Please refer to the RFA for the most accurate information about the date, time and location of this meeting.

Questions may be sent to Jennifer Prats at the Department of Small and Local Business Development at jennifer.prats@dc.gov. All questions not asked during the information session must be submitted in writing.

Reservations

DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of this Notice of Funding Availability (NOFA) or RFA, or to rescind the NOFA or RFA at any time.

TWO RIVERS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Architecture and Engineering Services

Two Rivers PCS is soliciting proposals to provide architecture and engineering services for middle school construction. For a copy of the RFP, please email Kate Dydak (kdydak@programmanagers.com). Submission deadline is Friday, March 22, 2019.

WASHINGTON YU YING PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Facility Partner**

Washington Yu Ying Public Charter School (Yu Ying) serves about 570 students grades PK3 - 5th grade in Washington, D.C.'s Ward 5. Yu Ying is seeking a qualified firm to assist with securing a long-term facility for a 2nd campus. The Facility Partner shall provide oversight of the project to include site identification and control through design and construction activities. The specific responsibilities of the Facility Partner will include but are not limited to: search for potential facilities, oversee pre-development activities, identify financing options, secure a new facility, overseeing construction or renovation / project management, and provide technical assistance. For a full RFP, please email RFP@washingtoneyu.org.

Deadline for submissions is on or before 12:00 PM (noon) on March 15, 2019. Please e-mail proposals and supporting documents to RFP@washingtoneyu.org. Earlier submissions are encouraged. Please specify “RFP for Facility Partner” in the subject line.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Governance Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Governance Committee will be holding a meeting on Wednesday, March 13, 2019 at 9:00 a.m. The meeting will be held in the Board Room (2nd floor) at 125 O Street, S.E. (1385 Canal Street, S.E.), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dewater.com.

DRAFT AGENDA

- | | |
|--|-----------------------|
| 1. Call to Order | Committee Chairperson |
| 2. Emerging Issues | Committee Chairperson |
| 3. Agenda for Upcoming Committee Meeting | Committee Chairperson |
| 4. Executive Session | Committee Chairperson |
| 5. Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Human Resources and Labor Relations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Human Resources and Labor Relations Committee will be holding a meeting on Wednesday, March 13, 2019 at 11:00 a.m. The meeting will be held in the Board Room (2nd floor) at 125 O Street, S.E. (1385 Canal Street, S.E.), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or لمانley@dcwater.com.

DRAFT AGENDA

- | | |
|----------------------|-----------------------|
| 1. Call to Order | Committee Chairperson |
| 2. Union Topics | Union Presidents |
| 3. Other Business | Committee Chairperson |
| 4. Executive Session | Committee Chairperson |
| 5. Adjournment | Committee Chairperson |

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18915 for Aminta, LLC, pursuant to 11 DCMR § 3103.2, for variances from the floor area requirements under § 771.2¹, the lot occupancy requirements under § 772.1, and the off-street parking requirements under § 2101.1, to allow the construction of a mixed-use residential structure with ground floor retail in the C-2-A District at premises 1330-1336 Pennsylvania Avenue, S.E. (Square 1044, Lots 29 and 802).

HEARING DATES: February 10, 2015, April 7 and April 28, 2015
DECISION DATE: April 28, 2015

DECISION AND ORDER

On November 3, 2014, Aminta, LLC (the "Applicant"), the owner of 1330-1336 Pennsylvania Avenue, S.E. (Square 1044, Lots 29 and 802) (the "Property"), filed a self-certified application with the Board of Zoning Adjustment (the "Board" or "BZA") for area variance relief under 11 DCMR § 3103.2 to allow the development of a mixed-use residential structure with ground floor retail where the structure does not conform to the residential lot occupancy, floor are ratio ("FAR") or parking requirements of the Zoning Regulations. The Board held a public hearing on the application on April 7, 2015 and continued the hearing to April 28, 2015. For the reasons discussed below, the Board voted to approve the requested relief for residential lot occupancy and parking, and deny the requested FAR relief on April 28, 2015.

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2. In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

Notice of Public Hearing. Pursuant to 11 DCMR § 3113.1, notice of the hearing was sent to the Applicant, all individuals and entities owning property within 200 feet of the Property, Advisory Neighborhood Commission ("ANC") 6B, the District Department of Transportation ("DDOT"),

¹ This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraphs, are to provisions that were in effect on the date this Application was decided by the Board of Zoning Adjustment ("the 1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text. Also all zone districts described in this order were renamed as of that date. The repeal and replacement of the 1958 Regulations and the renaming of the zone districts has no effect on the validity of the Board's decision or the validity of this order.

the Office of Planning ("OP") and the Councilmember for Ward Six. The Applicant posted placards at the Property regarding the application and public hearing, and timely submitted an affidavit to the Board to this effect.

Applicant's Case. The Applicant was represented by Meridith H. Moldenhauer Esq., of Griffin, Murphy, Moldenhauer & Wiggins, LLP. Jeff Goins, the project's architect, was present on the Applicant's behalf along with Samuel Fuentes, an authorized agent of the Applicant.

OP Report. OP reviewed the area variance application and by a report dated March 31, 2015, recommended disapproval of the FAR variance, and stated that it was not opposed to the lot occupancy and parking variance. (Exhibit 38.) OP's Representative Stephen Cochran, was present on both hearing dates and affirmed the recommendations found in OP's report. OP found that the Applicant failed to establish the nexus between the high core factor of the property due to its pentagonal shape and the requested FAR relief. OP also found that the Applicant failed to consider alternative layouts, unit types, fewer floors, or a smaller building. Consequently, OP concluded that approval of the requested FAR relief would be substantially detrimental to the intent of the Zoning Regulations.

With respect to residential lot occupancy, OP found that the remarkably narrow western end of the Property creates a practical difficulty. OP stated that "at the permitted 75% residential occupancy, there would be a practical difficulty in achieving reasonable configurations for residential units on such an irregularly shaped site." OP also found that the shape and size of the Property constituted an exceptional condition that precluded the construction of below-ground parking. Finally, OP concluded the approval of the lot occupancy and parking variance would not be detrimental to the public good and would not cause harm to the Zoning Regulations.

DDOT Report. By memorandum dated March 31, 2015 DDOT indicated that "DDOT does not object to the Applicant's request for variance." (Exhibit 39.)

ANC Report. The Property is located within the area served by ANC 6B, which is automatically a party to this application. ANC 6B filed a letter and resolution, dated February 2, 2015, indicating that ANC 6B, at a scheduled and public meeting on January 13, 2015, which was properly advertised and where a quorum was present, voted 8-0, with two abstentions, recommending approval of the application. (Exhibit 33.)

Party Status. There were no requests for party status. Accordingly, the parties to the case were the Applicant and ANC 6B.

Persons in Opposition. No persons testified in opposition at the hearing, and the Board received no letters in opposition to the Application.

Persons in Support. The Applicant submitted a petition with over 145 signatures in support of the Application. (Exhibit 37D.) The Capital Hill Restoration Society Zoning Committee filed a

letter dated February 9, 2015, indicating that at a meeting on January 7, 2015, the committee considered the Applicant's application and voted unanimously to support the Application. (Exhibit 34.)

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The Property is located at 1330-1336 Pennsylvania Avenue, S.E. (Square 1044, Lots 29 and 802).
2. The Property contains approximately 3,979 square feet of land area.
3. The Property is a through lot, with approximately 94 feet of frontage along Pennsylvania Avenue, S.E. and approximately 106 feet of frontage along G Street, S.E.
4. The Property is currently improved with a multistory commercial structure.
5. The Applicant currently owns and operates La Lomita, a restaurant, at the Property.
6. The Property is located less than 500 feet from the Potomac Avenue Metro station.
7. The Property is not located in an historic district.
8. Square 1044 is bounded by G Street, S.E. to the north; 14th Street, S.E. to the east; and Pennsylvania Avenue to the south and west.
9. Square 1044 is occupied by commercial uses and attached rowhouses.
10. The Property is located within the C-2-A District.
11. The C-2-A District "is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core." (11 DCMR §720.2.)
12. Across the street, at 1350 Pennsylvania Avenue, S.E., there is large mixed-use building with a Harris Teeter.

The Applicant's Project

13. The Applicant requests relief to convert a two-story commercial structure into a mixed-use residential building with a restaurant on the first floor.
14. The first floor restaurant will continue to be La Lomita.
15. The Applicant proposes to have 10 residential units on the remaining floors; one of which would be an inclusionary zoning ("IZ") unit.
16. The Applicant has provided a Transportation Demand Management ("TDM") Plan. (Exhibit 37B.)

The Zoning Relief Requested

Residential Lot Occupancy (§ 772.1)

17. Under § 772.1 and § 2604, the maximum permitted lot occupancy for a residential use in the C-2-A is 75%, while the maximum permitted lot occupancy for a commercial use is 100%.

18. The proposed structure has a lot occupancy of 89% throughout.

19. Therefore, relief is required for lot occupancy, based on the proposed residential use of the Property.

FAR (§ 771.2)

20. Pursuant to § 771.2 and § 2604, the total maximum FAR permitted is 3.0, with up to 1.5 being devoted to nonresidential use.

21. The proposed project has an FAR of 3.5 and requires relief from § 771.2.

Parking (§ 2101.1)

22. Apartment use in the C-2-A District requires one parking space for every two dwelling units.

23. The project, at 10 units, requires five parking spaces.

24. The project does not provide any parking spaces; therefore, parking relief is needed.

Exceptional Circumstance

25. The Property is a flat, irregularly-shaped, triangular lot.

26. The Property is the only irregularly-shaped, triangular lot in the Square.

27. The Property is a narrow through lot with 106 feet of frontage on G Street, S.E. and 93.6 feet of frontage on Pennsylvania Avenue, S.E.

28. The lot narrows from 65 feet at its eastern end to 16 feet at its western end.

29. The Property is currently nonconforming with respect to lot occupancy. The permitted lot occupancy in the C-2-A District is 60%. The existing structure occupies 89% of the lot.

30. The Property is currently nonconforming with respect to commercial FAR. The maximum permitted non-residential FAR in the C-2-A District is 1.5.

Practical Difficulty

31. Due to the exceptional circumstances at the Property, including the irregular triangular shape and the narrowness of the lot on the western end, strict application of the zoning regulations with respect to lot occupancy and parking would result in a practical

difficulty. However; the Applicant has failed to demonstrate how a development complying with the FAR requirements would be unduly burdensome or that all the additional FAR requested is needed.

32. The Applicant has provided testimony that it would be structurally efficient to continue the proposed lot occupancy throughout the entire structure.
33. The Applicant submitted evidence into the record demonstrating that the lot is able to visually accommodate higher residential lot occupancy.
34. The Applicant has provided testimony regarding the higher than average core factor the proposed structure has due to its shape. The Applicant noted that the maximum industry standard for a residential building is 20%; this project has a core factor of 26%.
35. The Applicant submitted evidence demonstrating that reducing the footprint of the structure would exacerbate the problems associated with the high core factor and would result in an inefficient partial fourth floor.
36. Due to the small irregular lot size and high core factor, reducing the FAR would also result in the elimination of the IZ unit; however, that would not be unduly burdensome to the owner.
37. The Applicant submitted unpersuasive testimony attempting to establish the financial burden providing fewer units would have on the marketability of the units.
38. The Applicant demonstrated that providing parking was not feasible at grade due to the Property's irregular triangular lot shape and size.
39. The Applicant submitted evidence noting the extreme burden providing underground parking would present. The narrowness and triangular shape of the lot makes providing the required parking spaces, drive aisles, and access ramps infeasible.
40. The Applicant noted that there are Metro facilities beneath the Property; consequently, excavation of the Property would be severely controlled and limited by WMATA.
41. Additionally, as demonstrated in the site plan submitted by the Applicant, there are no curb cuts on the lot to allow vehicular access onto the Property.

CONCLUSIONS OF LAW

Standard of Review

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code §6-

631.07(g)(3), to grant variance relief where, "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations 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 the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (11 DCMR §3103.2.)

The District of Columbia Court of Appeals has held that "an exceptional or extraordinary situation or condition" may encompass the buildings on a property, not merely the land itself, and may arise due to a "confluence of factors." *See Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

A showing of "practical difficulties" must be made for an area variance, while the more difficult showing of "undue hardship" must be made for a use variance. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). The Applicant in this case is requesting area variances and therefore is required to show that the strict application of the zoning regulations would result in "practical difficulties." *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). The Court of Appeals has repeatedly held that "economic use of property may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variance cases." *Tyler, et. al. v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362 (D.C. 1992) (internal citations removed) (*Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990) (Reiterating in the context of an area variance that "increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration.")).

The Applicant is seeking a variance from the Zoning Regulations regarding (i) residential lot occupancy (§ 772.1); (ii) FAR (§ 771.2); and (iii) parking (§ 2101.1). As discussed below, the Board concludes that the Applicant has met its burden of proof for the requested lot occupancy variance and the parking variance. The Board concludes that the Applicant has failed to meet its burden of proof for the requested FAR variance.

Exceptional Circumstance

The Board concludes that, based on a confluence of factors, an exceptional circumstance exists at the Property. The Property is an irregularly-shaped, triangular lot. The Property is 65 feet wide at its widest point and narrows to only 16 feet at the western end. The Property is a narrow through lot that has considerable frontage along Pennsylvania Avenue, S.E., a major artery in the District, and G Street, S.E. The existing structure is nonconforming with respect to commercial lot

occupancy and nonresidential FAR. Additionally, the Property is above Metro facilities controlled by WMATA.

Practical Difficulty

The Board concludes that the confluence of these exceptional and extraordinary conditions creates practical difficulties for the Applicant in complying with the requirements regarding lot occupancy and parking. The Board concludes that the exceptional and extraordinary conditions of the Property do not create a practical difficulty with respect to the Applicant's compliance with the FAR requirement.

Lot Occupancy (§ 772.1)

The Applicant has demonstrated, and the Board concurs, that constructing a mixed-use structure on the Property would be practically difficult without lot occupancy relief due to the irregular lot shape and the narrowing of the lot on the western side. The triangular shape of the lot constitutes an exceptional condition that with only 75% lot occupancy would create a practical difficulty in designing reasonable configurations for residential units. Furthermore, the Board concludes that the increased lot occupancy is needed to address the inefficiency associated with high core factor having a triangular lot shape presents. Requiring the Applicant to comply with the residential lot occupancy requirements would simply serve to increase the already high core factor of the building and would result in inefficiently designed units. In light of the evidence presented by the Applicant, the Board concludes that the Applicant has demonstrated the need for variance relief for residential lot occupancy to allow mixed-use development at the Property.

Parking (§ 2101.1)

The Board concludes that compliance with the parking requirement would result in a practical difficulty. The parking requirement cannot be met as a result of the exceptional circumstances at the Property, particularly the narrowness of the lot. The creation of above-grade onsite parking is impractical. The lot shape and narrowness substantially limits the buildable area at the Property and requiring the Applicant to provide above-grade parking would severely diminish the limited buildable area.

Providing underground parking at the Property would be extremely burdensome as well. An underground parking facility at the Property would be difficult to achieve, expensive to construct, and highly inefficient. Further, the Property is located on top of Metro facilities; therefore, excavation of the Property would also be severely limited. Due to the lot's shape and narrowness, each parking space would be very expensive to construct. Moreover, the narrowness of the Property makes a multilevel underground parking structure that could accommodate the required spaces, drive aisles, and access ramps infeasible. Furthermore, there is no curb cut on Pennsylvania Avenue, S.E. or G Street, S.E. to access the Property.

FAR (§ 771.2)

The Board finds that the Applicant has failed to establish a nexus between the unique conditions of the Property and the requested FAR relief. The Board notes that the Property is irregularly shaped, exceptionally narrow at the west end and a through lot with very long frontage on Pennsylvania Avenue, S.E. and G Street, S.E. The Board also recognizes that the core factor of 26% is higher than the average 17-20% core factor residential structures typically have; however, the Board finds that the Applicant failed to demonstrate that alternative plans for the Property would be unnecessarily burdensome. The Applicant failed to fully explore alternative design options with fewer units, fewer floors, or a smaller building all together. The Applicant also failed to demonstrate that without 10 units the project would not be financially feasible. Therefore, the Board concludes that unique conditions of the Property do not result in a practical difficulty with respect to FAR.

No Detriment to the Public Good or Zone Plan

The Board concludes that there will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the requested lot occupancy and parking relief. The Board also concludes that granting FAR relief would have caused no substantial detriment to the public good, but granting such relief would impair the intent and integrity of the current Zoning Regulations.

The increased residential lot occupancy will not have a substantial impact on the public good or the zone plan. The Property is an end of row corner lot that is bordered by a District park on the western end. The Property's shape and considerable frontage along Pennsylvania Avenue, S.E. and G Street, S.E. give the Property an open feel. Further, since the Property is an end of row lot, the increased lot occupancy will not interfere with the light or privacy available to neighboring lots.

The Board also concludes that parking relief can be granted without detriment to the public good or zone plan. Due to the Property's proximity to public transportation, including the Potomac Avenue Metro station which is less than 500 feet away, several bus routes, carsharing and bikesharing options, variance relief for five spaces will not have a substantial impact on the community. In addition, the Applicant will implement the Transportation Demand Management Plan to promote the use of non-automotive transportation. The Board concludes that the availability of a variety of transportation options, particularly carsharing and proximity to the Metro, reduces the need for residents to own a vehicle. Thus, granting the parking variance will not be detrimental to the public good or zone plan.

Finally, the Board concludes that there will be no substantial detriment to the public good if the FAR variance were granted. The Applicant has established that the Property can accommodate a larger structure; however, the Board concludes that granting the FAR variance would have a substantial detriment to the intent of the Zoning Regulations. The Applicant has requested an

additional 0.5 FAR above the permitted FAR but the Applicant has failed to demonstrate that an increased FAR is necessary for the project to move forward. The Board concludes that granting such a significant deviation from the permitted FAR provided for in the C-2-A Zoning District would impair the intent and integrity of the current Zoning Regulations.

Great Weight to ANC and OP

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations of the Office of Planning. (D.C. Official Code §§1-309.10(d) and 6-623.04 (2001).) Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. ANC 6B unanimously supported the granting of the requested variances. The ANC found that the "project's impact on light, air, and privacy will be negligible, and the applicant's arguments in support of the requested variances are valid." The ANC did not discuss each variance request individually in their submission; therefore, while the Board agrees with the ANC position with respect to the lot occupancy and parking variance, the Board disagrees with the ANC concerning the Applicant's arguments regarding the FAR variance, for the reasons discussed in detail above. OP opposed the granting of the FAR variance and stated it "would not be opposed" to the residential lot occupancy and the parking variance. The Board agrees with OP's position.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the FAR requirements of § 771.2 but has met the burden of proof for variance relief pursuant to 11 DCMR § 3103.2 from the requirements for lot occupancy (§ 772.1) and parking (§ 2101.1) to allow the Applicant to develop a mixed-use residential structure with ground floor retail in the C-2-A District at premises 1330-1336 Pennsylvania Avenue, S.E. (Square 1044, Lots 802 and 29).

Accordingly, it is therefore **ORDERED** that the application is hereby **DENIED IN PART and GRANTED IN PART AND WITH THE FOLLOWING CONDITIONS:**

Transportation Demand Management Plan

1. The Applicant shall include in its condominium declaration and bylaws a provision that prohibits unit owners or their tenants from obtaining a Residential Parking Permit ("RPP") at the building from the D.C. Department of Motor Vehicles ("DMV") for the life of the project. The bylaws shall include consent and authorization to the Condominium Board to police and enforce this prohibition including authority to fine violators;
2. The Applicant shall record a covenant against the Property among the Land Records of the District of Columbia prohibiting any lessee or owner of the Property from obtaining an RPP at the building approved by this BZA Order for the life of the project.

3. The Applicant shall include a disclaimer in all unit purchase contract agreements informing the potential buyer of the RPP restriction and requiring the potential buyer to initial that they have read and understand the restriction.
4. The Applicant shall elect a representative each year who will be the contact person between the Property and the neighborhood, the representative's name and email shall be provided to the Office of Zoning and ANC Single Member District Representative.
5. The Applicant shall provide more than the required number of bicycle parking spaces in a covered and secure location within the building.
6. The Applicant shall provide each residential unit with a \$200 Smart Trip card, a Capital Bikeshare membership, or a car sharing membership for a period of five (5) years.
7. A TDM marketing program shall be established that provides detailed transportation information and promotes walking, cycling, and transit. An effective marketing strategy should consist of a multi-modal access guide that provides comprehensive transportation information. This information can be compiled in a brochure for distribution. The marketing program should also utilize and provide website links to CommuterConnections.com and goDCgo.com, which provide transportation information and options for getting around the District.
8. A TransitScreen shall be installed in the residential lobby to keep residents and visitors informed on all available transportation choices and provide real-time transportation updates. In addition, printed materials related to local transportation alternatives shall be made available to residents and retail employees upon request and at move-in for new tenants. Instructions shall also be made available to residents and retail employees describing the numerous available sources of real-time transportation updates and how to access transportation updates via multiple mediums.
9. Residents who wish to carpool shall be provided detailed carpooling information as part of the marketing effort, and shall be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments.

VOTE: **4-0-1** (Lloyd J. Jordan, Jeffrey L. Hinkle, Marnique Y. Heath, and Michael G. Turnbull to DENY IN PART and APPROVE IN PART; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: February 21, 2019

BZA APPLICATION NO. 18915

PAGE NO. 10

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19187 of 1212-1216 4th Street, LLC, pursuant to 11 DCMR § 3103.2¹, for variance relief from the lot area requirements under § 401.11, the lot occupancy requirements under § 403.2, and additions to nonconforming structures (§ 2001.3), and, pursuant to 11 DCMR § 3104.1, for special exception relief for a change to a nonconforming use under § 2003 to allow the conversion of an office use to a neighborhood retail or service establishment in the R-4 Zone District at premises 1212-1218 4th Street, N.W. (Square 513, Lots 155 and 156).

HEARING DATE: March 15, 2016
DECISION DATE: April 12, 2016²

DECISION AND ORDER

This self-certified application was submitted on November 9, 2015, by 1212-1216 4th Street, LLC (the “Applicant”), the owner of the property that is the subject of the application. As amended, the application requested special exception relief pursuant to § 3104.1 to change from one nonconforming use to another (§ 2003) to allow conversion of an office use to a neighborhood retail or service establishment (the “Neighborhood Establishment”), and variance relief under § 3103.2 for the requirements regarding lot area (§ 401.11), lot occupancy (§ 403.2), and additions to nonconforming structures (§ 2001.3), to allow the expansion of an existing apartment building (collectively, the “Project”)³ in the R-4 Zone District at premises 1212-1218 4th Street, N.W. (Square 513, Lots 155 and 156) (the “Property”). At its public meeting on April

¹ All references to Title 11 DCMR within the body of this order are to provisions that were in effect on the date the case was decided by the Board of Zoning Adjustment (the 1958 Zoning Regulations), but which were repealed as of September 6, 2016 and replaced by new text (the 2016 Zoning Regulations). The repeal and adoption of the replacement text has no effect on the validity of the Board’s decision in this case or of this order.

² The application was postponed from the original hearing date of March 8, 2015, and the hearing was subsequently held on March 15, 2016. The application was originally set for decision on April 5, 2016, but was postponed until April 12, 2016.

³ To simplify the degree and areas of relief, the Applicant asked the Board to review the application under more restrictive standards applicable to expansions of existing apartment buildings, even though there are multiple uses at the Property and the Project is more complex than a straightforward expansion. Specifically, the premises at 1212-1214 4th Street, N.W. is an existing apartment house; 1216 4th Street is a mixed-use residential building with an office; and 1218 4th Street is a non-residential property with a history of use as a fuel and oil pump and liquor store. (Exhibits 8B and 8C, Original Building Permits for 1212-1216 4th Street, N.W.; Exhibit 26 at Ex. A, Certificates of Occupancy for 1216-1218 4th Street, N.W.).

12, 2016, the Board of Zoning Adjustment (“Board” or “BZA”) voted to grant the application with respect to special exception relief and to deny the application with respect to variance relief.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated November 25, 2015, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 6; Advisory Neighborhood Commission (“ANC”) 6E, the ANC for the area in which the Property is located; and the representative for ANC Single Member District 6E04. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters on November 24, 2015, providing notice of the hearing to the Applicant, ANC 6E, and the owners of all property within 200 feet of the Property. Notice of the hearing was published in the *D.C. Register* on November 27, 2015 (62 DCR 15308).

Party Status. The Applicant and ANC 6E were automatically parties to this proceeding. On February 8, 2016, Sergei Mikhailov, a nearby resident, filed a request for party status. (Exhibit 23.) However, on March 14, 2016, prior to the hearing on the application, Mr. Mikhailov filed a rescission of his party status request, stating that the Applicant had resolved his concerns and that he now supported the application. (Exhibit 31.) Included in Mr. Mikhailov’s rescission letter were conditions related to the parking plan for the Project, which the Applicant agreed to proffer to the Board pursuant to the resolution it reached with Mr. Mikhailov. On March 14, 2016, the Applicant filed an addendum to its Prehearing Statement proffering several conditions. (Exhibit 34.) The conditions were as follows:

1. The Applicant shall provide a minimum of 27 parking spaces as part of the Project;
2. The Applicant shall limit the number of parking spaces available to the residents of the Project to one parking space per dwelling unit or not to exceed 22 parking spaces being utilized by those residents; and
3. The Applicant shall make the parking spaces available to all property owners within 200 feet (the “Nearby Property Owners”) as follows: Six months after the issuance of a Certificate of Occupancy for the Project or six months after 75% of the dwelling units for the Project have been sold or leased, whichever date is later, notice shall be given to the Nearby Property Owners stating that they shall have 30 days from the date of the notice to send a letter of intent to purchase or lease the remaining parking spaces available after parking spaces have been offered to the residents of the Project. The parking spaces shall be available to the Nearby Property Owners for purchase or lease on a first-come, first-serve basis, at a 15% discount of the current market rate sale or rent price for covered parking spaces in Mt. Vernon Square.

In addition to these conditions, Mr. Mikhailov’s rescission letter also referenced conditions that the Applicant agreed to proffer when it sought and received the support of ANC 6E.

No other persons requested party status.

Applicant's Case. The Applicant provided evidence and testimony describing the Project – to demolish the two existing garages on the Property and to preserve and add to the existing historic structure on the Property (the “Historic Structure”). The resulting structure will be a mixed-use building with 22 residential units and 760 square feet of space for the proposed Neighborhood Establishment. The Project will also include a below-grade level for parking and a total of 27 parking spaces.

OP Report. By memorandum dated March 8, 2016, OP recommended denial of the application. (Exhibit 29.) OP stated that granting the requested variance relief would permit expansion of an apartment building beyond the density and lot occupancy anticipated in the R-4 Zoning District. OP further stated that the Property does not exhibit any exceptional situation that would result in a practical difficulty in renovating the Property within the zoning restrictions. OP stated that the Project could result in undue impacts to other properties in the area and would present substantial and unjustified harm to the Zoning Regulations, specifically to the intent of the R-4 Zone District to be a predominantly rowhouse zone and not an apartment zone.⁴

With respect to the requested special exception relief under § 2003, OP stated that the commercial uses on the Property had lapsed for a three-year period, which, under § 2005.1, constitutes prima facie evidence of no intention to resume active operation as a nonconforming use. Once a nonconforming use has been abandoned, subsequent use of a property must conform to the regulations. OP stated that the Applicant had not submitted evidence indicating an intent to continue the nonconforming commercial uses and that a building permit had been issued to a previous owner for conversion from office space to a two-family flat. Accordingly, OP stated that it could not proceed with an analysis of the requested special exception because the use seems to have been converted to a conforming residential use.

DDOT Report. By memorandum dated March 8, 2016, DDOT indicated that it had no objection to the requested relief. (Exhibit 30.)

ANC Report. By letter dated March 6, 2016, ANC 6E indicated that, at a duly noticed meeting on March 1, 2016, the ANC voted, with a quorum present, 5-1-0 to support the application. The ANC further indicated that it voted 4-2-0 to support a Letter of Revisions and Proffers that the Applicant presented to the ANC, along with two additional conditions requested by the ANC. (Exhibit 28.) On March 1, 2016, the Applicant submitted an addendum to its Prehearing Statement confirming and attaching the Letter of Revisions and Proffers. (Exhibit 27.)

At the March 15, 2016 public hearing on the application, the Board heard testimony from Rachele Nigro, the representative for Single Member District (“SMD”) 6E04, the SMD in which the Property is located. Commissioner Nigro reaffirmed the ANC’s support for the Project and

⁴ In its report, OP also stated that relief for the requirements regarding nonconforming structures (§ 2001.3) was also necessary. The Applicant subsequently amended its application to request a variance from this requirement as well.

reiterated that the community’s primary concerns were related to parking. (BZA Public Hearing Transcript (“Tr.”) of March 15, 2016 at 158-168.)⁵

Persons in support or opposition. No person appeared to testify in support of or opposition to the Application. Shawn Montgomery, a member of the Church of the Living God (the “Church”), located at 1206 4th Street N.W., provided testimony in neither support nor opposition. Mr. Montgomery testified that the Church’s primary concerns were related to parking, as well as the need to maintain the Property and ensure that there would be no structural effects on the Church as a result of the excavation needed to construct the Project’s underground parking level. (Tr. of March 15, 2016 at 168-170.)

Post-hearing submissions. On March 29, 2016, the Applicant submitted an informational draft order in response to the Board’s request at the public hearing. (Tr. of March 15, 2016 at 176-178.) The night before the scheduled decision date of April 5, 2016, Cheryl Stein, a nearby resident, and Commissioner Nigro requested to reopen the record to clarify the conditions proffered by the Applicant. To address the concerns raised by both Cheryl Stein and Commissioner Nigro, the Applicant submitted a clarification of proffers and conditions on April 7, 2016. (Exhibit 40.)

Motion for reconsideration and rehearing. On May 4, 2016, the Applicant submitted a motion for reconsideration and rehearing following the Board’s oral decision of April 12, 2016. Pursuant to § 3126.2, the motion was returned to the Applicant. (Exhibit 41.)

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at the intersection of 4th Street, N.W. and Ridge Street, N.W., which includes street addresses for 1212-1218 4th Street, N.W.
2. The subject property is comprised of Lots 155 and 156 in Square 513. Together, the lots have approximately 9,954 square feet of land area.
3. The subject property is within the R-4 Zone District, which is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families. (11 DCMR § 330.1.) The “primary purpose” of the R-4 Zone is the “stabilization of remaining one-family dwellings.” (11 DCMR § 330.2.)
4. The subject property is in the Mount Vernon Square Historic District.

⁵ Note that, while the ANC’s report requested a minimum of 29 parking spaces, Commissioner Nigro testified at the March 15, 2016 public hearing that she had reviewed the latest submission from the Applicant (which indicated that 27 spaces would be provided) and that this submission was acceptable. (Tr. of March 15, 2016 at 165).

5. The Property is currently improved with a two-story row structure that extends across 1212-12146 4th Street and is a contributing structure in the Mount Vernon Square Historic District. The Property is also currently improved with a garage to the rear of the Historic Structure, as well as a larger commercial garage at 1218 4th Street (the “Commercial Garage”).
6. The Historic Structure consists of a six-unit apartment building located at 1212-1214 4th Street (the “Apartment Building”) and a mixed-used building with an office on the first floor and two residential units above, located at 1216 4th Street (the “Mixed-Use Building”).
7. Both Lot 155 and Lot 156 have a long history of non-residential uses postdating 1958. In 1961, a Certificate of Occupancy was granted for the Commercial Garage for use as an oil and gas pump and storage facility for trucks and cars. In 1964, another Certificate of Occupancy was issued for the Commercial Garage to be used by Lucky Liquors, Inc. as a retail beverage store with food and tobacco products. In 1974, the Mixed-Use Building was granted a Certificate of Occupancy to operate a taxicab office. In 1978, another Certificate of Occupancy was issued for the Mixed-Use Building to operate a general cleaning office. These are the most recent Certificates of Occupancy available on public record for the Property.
8. Square 513 is in an R-4 Zone District that abuts several high-density zones. The square is bordered on the north and east by R-5-B Zone Districts, and is bordered to the south by an R-5-B/Downtown Development (“DD”) Overlay District. The Walter E. Washington Convention Center (the “Convention Center”) is approximately two blocks east of the square, and the highly-trafficked New York Avenue runs approximately one block south and east of the square.
9. There are several multi-family residential buildings in Square 513, including an apartment building on the adjacent property to the south at 1210 4th Street N.W. Across Ridge Street from the Property is a set of six flats at 1220-1230 4th Street N.W., which have a relatively large massing.

The Project and the Relief Requested

10. The Applicant proposes to combine Lot 155 and Lot 156, raze the existing garages on the Property, and renovate and construct an addition to the existing Historic Structure.
11. The result will be a three-story mixed-use building with 22 residential units and 760 square feet of space for a neighborhood servicing retail or service establishment on the ground floor. The Project will also include a below-grade level for parking and a total of 27 parking spaces.

12. The Applicant proposes to convert the existing office use in the Mixed-Use Building into the proposed Neighborhood Establishment. An office is a nonconforming use in the R-4 District, as are retail and service establishments.
13. Under § 2003, the Board may permit, by special exception, a change from one nonconforming use to any nonconforming use permitted as a matter of right in the most restrictive zone district in which the existing nonconforming use is permitted as a matter of right. The most restrictive district in which an office use is permitted as a matter of right is the C-1 Zone District. The Applicant proposes to convert the existing office to a retail or service establishment permitted as a matter of right in the C-1 Zone District, such as a coffee shop, bike repair shop, bakery, or dry cleaner.
14. The Property has not been used for any nonconforming use since before the Applicant purchased the Property in 2012.
15. In 2008, a previous owner of the Property was issued a building permit, Permit No. B115244 for 1216 4th Street, N.W. (Exhibit 29 at pg. 8.)
16. Dr. Sahr Bockai, the Applicant's authorized agent, testified at the March 15, 2016 hearing that, to his knowledge, there has never been an intent to abandon the commercial uses on the Property. (Tr. of March 15, 2016 at 121.)
17. Under § 401.11, an existing apartment building may not be expanded to increase the number of dwelling units unless there are 900 square feet of land area for each dwelling unit. The Project will have 22 units with a land area of 9,954 square feet, or approximately 453 square feet per dwelling unit. Accordingly, the Applicant requests variance relief from the minimum lot area requirements.
18. Under § 403.2, an expansion of an existing apartment building is limited to 40% lot occupancy. The Applicant requests variance relief to construct a building with a lot occupancy of 75%.
19. The Property currently has a lot occupancy of 41%. Accordingly, the Applicant requests a variance from § 2001.3 to permit an addition to a nonconforming structure.
20. After working with members and representatives of the surrounding community, the Applicant made the following changes to the Project:
 - A. Reduced the massing and removed an originally proposed penthouse;
 - B. Revised the façade along Ridge Street, N.E. to resemble rowhomes;
 - C. Included neighborhood servicing retail space as part of the Project; and

- D. Reduced the unit count to 22 units.
21. After working with members and representatives of the surrounding community, the Applicant agreed to the following conditions:
- A. Parking Spaces.
- i. Provide a minimum of 27 parking spaces as part of the Project; and
 - ii. Limit the number of parking spaces available to the residents of the proposed Project to one (1) parking space per dwelling unit, or not to allow residents of the proposed Project to utilize more than twenty-two (22) parking spaces;
- B. Parking for Nearby Property Owners. Make parking spaces available to the owners of all property within two hundred feet (200 ft.) (the “Nearby Property Owners”), as follows:
- i. Six (6) months after the issuance of a Certificate of Occupancy for the project or six (6) months after seventy-five percent (75%) of the dwelling units for the Project have been sold or leased, whichever date is later, notice shall be given to the Nearby Property Owners stating that they shall have thirty (30) days from the date of the notice to send a letter of intent to purchase or lease the remaining parking spaces available after parking spaces have been offered to the residents of the Project; and
 - ii. On a first-come, first served-basis, offer excess parking spaces to Nearby Property Owners at a purchase price or rental rate at fifteen percent (15%) below the market rate for covered parking spaces in Mt. Vernon Square.
- C. Residential Parking Permit Restrictions. Impose Residential Parking Permit (“RPP”) restrictions by including restrictions in the condominium documents recorded against the Property, as follows:
- i. The Applicant/Condo Board shall include in its condominium documentation a provision that prohibits residents/owners from obtaining an RPP for the Property from the D.C. Department of Motor Vehicles (“DMV”), under penalty of fine(s) against the condominium unit owner;
 - ii. The Applicant/Condo Board shall obtain written authorizations from each owner, either through a deed provision or another written document that allows the DMV to release the Applicant/Condo Board any and all records of that resident/owner requesting or receiving an RPP for the Property;

- iii. The Applicant/Condo Board shall monitor resident/owner compliance with the RPP lease restrictions by requesting from the DMV, every six (6) months, any and all records of residents/owners requesting or receiving RPPs for the Property, and shall provide annually the Condominium Board the results of its inquiries; and
- iv. The Applicant/Condo Board shall record a covenant against the Property among the Land Records of the District of Columbia prohibiting any owner of the Property from obtaining an RPP for the building approved as party of this application.

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception and variance relief to construct the Project. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in the Zoning Regulations, where it will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to adversely affect the use of the neighboring property, subject to specific conditions. (11 DCMR § 3104.1.)

The Board is also authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3), to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations 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 the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (11 DCMR § 3103.2.)

Special Exception Relief

The Applicant requests a special exception under § 2003 to convert the existing office use in the Mixed-Use Building into the proposed Neighborhood Establishment. Based on the findings of fact, the Board concludes that the Applicant has met its burden of proof for the requested relief.

An office is a nonconforming use in the R-4 District, as are retail and service establishments. Under § 2003, the Board may permit a change from one nonconforming use to any nonconforming use that is permitted as a matter of right in the most restrictive zone district in which the existing nonconforming use is permitted as a matter of right. The Neighborhood Establishment is likened to a retail or service establishment that is permitted as a matter of right in the C-1 Zone District, such as a coffee shop, bike repair shop, bakery, or dry cleaner.

The Board concurs with the Applicant that the Neighborhood Establishment will not adversely affect the present character or future development of the surrounding area, nor will it create any

deleterious external effects, as required by §§ 2003.2 and 2003.3. To the contrary, the Neighborhood Establishment will provide much-needed retail or services in a neighborhood facility, as permitted under § 2003.5. Through extensive community outreach, the Applicant learned that such services were specifically requested and that the Project will benefit the surrounding community.⁶

The existing nonconforming office use has never been changed to a conforming or more restrictive use, as required by § 2003.4. Although OP's report indicated that a previous owner had been issued a building permit to convert the office in the Mixed-Use Building to a two-family flat, the documentation that OP attached to its report provided conflicting and ambiguous information as to whether the permit authorized the conversion of the office space or only the second story dwelling. (Exhibit 29). In any event, there is no evidence that work was ever begun under this permit.

Still, the Property has not been used for a nonconforming use since the Applicant purchased the Property in 2012. Section 2005.1 prohibits resumption of a nonconforming use once it has been abandoned, and states, in relevant part:

[d]iscontinuance for any reason of a nonconforming use of a structure or of land . . . for any period of more than three (3) years, shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located.

“The test [for abandonment] in the District of Columbia continues to be (1) the intent to abandon, and (2) some overt act or failure to act which carries the implication of abandonment.” *Application No. 17902 of Joseph Park* (2009) (quoting *George Wash. Univ. v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342, 1345 (D.C. 1981)). As the Board explained in *Park*, § 2005.1 provides that discontinuance for three years or more creates a presumption of abandonment but this presumption may be rebutted “if the owner of the nonconforming use can make the appropriate showing that he did not intend” to abandon the use. *Id.*

Here, the Board credits the testimony of Dr. Bockai, the Applicant's authorized agent that, to his knowledge, there has never been an intent to abandon the commercial uses on the Property. *Supra* at 6. Accordingly, the Applicant is not prohibited from converting the office use to the proposed Neighborhood Establishment under § 2003. Further, the Board finds that no modifications to the proposal are necessary under § 2003.7. Thus, the Applicant satisfies the requirements for special exception relief under § 2003.

⁶ See Tr. of March 15, 2016 at 140 (Applicant alluding to ANC's request for “local coffee shop or some sort of neighborhood servicing retail establishment closer by their homes[.]”).

Variance Relief

The Applicant seeks variance relief from the regulations regarding lot area under § 401.11, lot occupancy under § 403.2, and additions to nonconforming structures under § 2001.3. The Board voted to deny the Applicant each of the requested variances at its public meeting on April 12, 2016, for the reasons stated below.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that: (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). Based on the findings of fact, the Board concludes that the Applicant has not met its burden of proof for the requested area variances.

Exceptional Situation or Condition

The Board does not find that, based on a confluence of factors, an exceptional situation or condition is inherent in the Property. The Applicant claims that the Property is exceptionally large, and that the significant density surrounding the property is a factor creating an exceptional situation. The Board notes that the Property is located in a unique R-4 Zone District that abuts higher density R-5-B Zone Districts on three sides, and is near the Convention Center, Downtown, and New York Avenue. However, the Board does not concur with the Applicant that the Property's location creates an exceptional condition.

The Board may consider zoning history in determining whether variance relief is warranted. *See, e.g., DeAzcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233 (D.C. 1978) (extraordinary conditions may justify a finding of uniqueness based on events that are extraneous to the land, including the zoning history of a property). In this case, the Applicant supports its request for variance relief by alluding to the Property's prior designations for residential uses and various commercial uses that date back to at least 1961. The Property is currently improved with structures that were most recently used as an apartment house, a mixed-use building with a ground-floor office and residential units above, and a garage devoted to various commercial uses. The Applicant claims that such a variety of uses and structures is unusual and results in the Project being a unique, hybrid development that is partly a conversion of a non-residential structure and also partly an expansion of an existing apartment house.

Additionally, the Applicant contends that the interior layout of the existing Historic Structure on the Property is highly inefficient due to multiple interior renovations over the years. The Applicant points to electrical damage, water damage, and animal infestation as reasons for the "severely dilapidated condition" of the Property. (Exhibit 37.) The Board notes that the Historic Structure is a contributing structure in the Mount Vernon Square Historic District, and that the Applicant is committed to its preservation and restoration. Relatedly, the Board notes that the

Property has been used as an oil and gas pump, which might require the Applicant to conduct environmental studies and subsequent remediation. However, the Board cannot grant variance relief given the uncertainty surrounding the true condition of the Historic Structure. As such, the Board is not persuaded that the combined result of the Property's historical factors is an exceptional circumstance affecting the Property.

The Property has no encumbrances, such as grade changes, or any other exceptional situations that would create a practical difficulty for the Applicant. The Board concurs with OP's analysis in that the Applicant could renovate the proposed combined structure within the requirements prescribed for the R-4 District, including both density (which, in this zone, is measured in number of units) and lot occupancy. Based on its factual findings and its analysis of the Applicant's confluence of factors, the Board does not find that an exceptional circumstance exists at the Property.

Practical Difficulties

Having found the absence of exceptional circumstance, the issue of practical difficulties becomes moot. Nevertheless, the Board analyzed the issue and found that even if an exceptional circumstance were present, there was no practical difficulty in complying with matter of right standards.

In order to prove "practical difficulties," an applicant must first demonstrate that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Gilmartin*, 579 A.2d 1164, 1170; *see also Russell v. District of Columbia Bd. of Zoning Adjustment*, 402 A.2d 1231, 1235 (D.C. 1979) ([The] applicant for an area variance must demonstrate that the 'practical difficulties' of compliance are caused by the uniqueness of the property, not merely that his plight is unique."). The Board concludes that the Applicant's financial grievances do not create a practical difficulty that warrants relief from strict application of the Zoning Regulations.

The Applicant's core argument is that the Project is not financially feasible if the Project involves fewer than 22 residential units. According to the Applicant, the Project, as proposed, is expected to provide a modest return-on-investment ("ROI") of 5.03%. For sake of comparison, the Applicant claims that a Project with only 15 residential units would result in an ROI of 3.08%, and a project with only the 11 units permitted as a matter of right would provide an ROI of 0.68%. The Board recognizes the Applicant's financial concerns, but finds it inappropriate to grant variance relief to safeguard the Applicant from the financial volatility of its investment. (Tr. of April 12, 2016 at 61-63.)

The Applicant argues that the Board has found financial hardship might constitute a practical difficulty in variance cases. *See Application No. 17446 of Pauline S. Ney (2006)*; (finding practical difficulty based on economic burden); *Application No. 16573 of Martin E. Hardy (2000)* ("The Board may consider the economic hardship in evaluating the applicant's practical difficulties . . ."). The D.C. Court of Appeals has also cited financial hardship as a consideration

for variance relief. *See Tyler v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992) (“[E]conomic use of property may properly be considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variances cases.”) (quotation and citation omitted); *Gilmartin* at 1171 (“Increased expense and inconvenience to applicants for a variance are among the proper factors for BZA’s consideration”) (internal citation omitted). While the Board agrees that the factor of financial hardship can be significant, that does not mean its mere demonstration, or lack thereof, is sufficient to decide whether or not a practical difficulty exists.

In this case, however, the Board is not persuaded by the Applicant’s financial hardship argument. To satisfy its burden, the Applicant proffers a pro forma that the Board finds to be much too speculative and fungible. (Tr. of April 12, 2016 at 59). The pro forma is unconvincing because the Applicant’s cost estimates are based on various assumptions and incomplete information. Furthermore, the Applicant’s concern that the Project will be costly is not a justifiable basis to relieve the Applicant of strict compliance with the Zoning Regulations. Increased expense is but one factor to be considered. *See Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (increased expenses involved with expansion of kitchen did not entitle area variance). The Applicant misconstrues a potential lower rate of return as financial distress, and the Board will not grant variance relief because the Applicant is concerned that it might not be able to maximize earnings. (Tr. of April 12, 2016 at 63.)

Generally, when evaluating financial feasibility, the Board cannot address or define which return rates are acceptable or unacceptable. As is the case here, the financial feasibility of any project is largely a “facts and circumstances” study. *See Palmer v. District of Columbia Bd. of Zoning Adjustment* 287 A.2d 535, 542 (D.C. 1972) (“The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.”). To clarify, the Board is not persuaded by the Applicant’s financial hardship claim, but not based on its finding that the project is either financially feasible or infeasible. Instead, the Board finds that the Applicant’s pro forma is too conjectural to substantiate a claim of financial distress.

Finally, as an experienced developer, the Applicant is, or should have been, aware that the Project poses challenges similar to those common for conversions of non-residential buildings – such as substantial internal reconfiguration and possible environmental study and remediation. Even if the Project is subject to the more stringent requirements applicable to expansions of existing apartment houses, such obstacles are easily discernable, and should have been factored into the Applicant’s purchase price when producing the pro forma. Based on these findings, the Board does not concur with the Applicant that there is a financial hardship that justifies a practical difficulty, and therefore cannot grant the requested variance relief.

No Detriment to the Public Good or Zone Plan

Although the Board found that the first two prongs of the variance test had not been met, it nevertheless analyzed whether granting the variance relief sought would result in substantial detriment to the public good, and concluded it would not. The Project will complement the

surrounding neighborhood; it will rehabilitate a long-vacant property, the existing dilapidated Commercial Garage on Ridge Street, N.W. with a rowhome-type façade that extends the character of the other dwellings on Ridge Street to the end of the block and provides a continuous transition to 4th Street. Further, in response to requests from the surrounding community, the Project will include the proposed Neighborhood Establishment and will provide 27 parking spaces, well above the seven spaces required under the Zoning Regulations. The Project has the backing of ANC 6E and the surrounding community, and the Board credits this to support its conclusion that there will be no detriment to the public good. (Tr. of April 12, 2016 at 67.)

Nevertheless, the Board finds that variance relief cannot be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The intent of the R-4 rowhouse area, as described in the zoning and in the Comprehensive Plan, is for it to remain a predominantly rowhouse zone, and for it to not be an apartment zone. This intent to limit both conversions of rowhouses to apartment buildings and expansion of existing apartments was confirmed by the Zoning Commission in late 2015 as part of Z.C. Case No. 14-11.

As such, the explicit intent of the R-4 Regulations is to ensure that development, whether new or expansions to existing structures, maintains the row house character, which includes density. The R-4 District is explicitly not intended to be an apartment zone, or to encourage non-conforming expansions of existing apartment buildings. This proposed expansion would double the number of units anticipated by the zone, so it is well in excess of the prescribed limits and well beyond the intent or density of the zone. The proposed lot occupancy would be 87.5% more than the maximum permitted in the R-4 District and further facilitates the proposed increase in the density (number of units), so is also contrary to the wording and intent of the regulations.

Given the foregoing aspects and purpose of the R-4 District, the Board is not persuaded that the Applicant has satisfied its burden. The question of why the Project requires twice the number of units permitted as matter of right remains unanswered. (Tr. of April 12, 2016 at 67.) The Board concurs with OP's analysis on this matter, and concludes that the Project will result in substantial harm to the Zoning Regulations.

Office of Planning

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) The Board must demonstrate in its finding that it considered OP's views and must provide a reasoned basis for any disagreement. *Glenbrook Rd. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 605 A.2d 22, 34 (D.C. 1992) (internal citation omitted).

In this case, OP recommended denial of the Applicant's request for special exception relief under § 2003. The Board does not concur with OP's recommendation to deny the Applicant's special exception request. OP's report indicated that, because the commercial uses on the Property had

lapsed for a three-year period, this constitutes prima facie evidence, under § 2005.1, of no intention to resume active operation as a nonconforming use, thus requiring that subsequent use of a property conform to the Zoning Regulations. OP stated that the Applicant had not submitted evidence indicating an intent to continue the nonconforming commercial uses and that a building permit was issued to a previous owner for conversion from office space to a two-family flat. Accordingly, OP stated that it could not proceed with an analysis of the requested special exception because the use seemed to have been converted to a conforming residential use.

For the reasons stated above, the Board finds that the Applicant has satisfied the requirements for special exception relief under § 2003. First, as discussed above, although OP stated in its report that a previous owner had been issued a building permit to convert the office in the Mixed-Use Building to a two-family flat, the reports attached to OP's report are inconclusive. In any event, there is no evidence that work was ever begun under this permit. Second, the Applicant provided sufficient evidence at the March 15, 2016 hearing to overcome the presumption of abandonment under § 2005.1. (Tr. of March 15, 2016 at 141-142.) Again, the Board credits the testimony of Dr. Bockai that, to his knowledge, there has never been an intent to abandon the commercial uses on the Property. Accordingly, the Board finds that the concerns raised by OP regarding a potential abandonment of the commercial use of the Property have been addressed.

Based on findings of fact and conclusions of law, and for the reasons stated above, the Board concurs with OP's recommendation to deny the Applicant's request for variance relief from the lot area requirements under § 401.11, the lot occupancy requirements under § 403.2, and additions to nonconforming structures under § 2001.3.

Advisory Neighborhood Commission

The Board must also give "great weight" to the issues and concerns that the affected ANC raises in its written report. (Section 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)).) In this case, ANC 6E submitted a letter in support of the Project, subject to conditions related to parking, as referenced above. (Exhibit 28.) These issues pertain the question whether the project would tend to adversely affect neighboring properties or substantially impair the public good, and as noted the Board concluded that the project would have neither effect. However, since the Applicant failed to meet the first two prongs of the variance test, the Board was required to deny that portion of the application.

Therefore, for the reasons stated above, it is hereby:

ORDERED that the application is **GRANTED**, in part to allow a special exception for a change to a nonconforming use under § 2003 to allow the conversion of an office use to a neighborhood retail or service establishment, and

ORDERED that the application is **DENIED**, in part, for variance relief from the lot area requirements under § 401.11, the lot occupancy requirements under § 403.2, and additions to nonconforming structures (§ 2001.3),

Since the conditions of approval detailed in Finding of Fact No. 21 of this Order (pp. 7-8) were based upon plans that cannot go forward, they will not be repeated below. Any change to those plans would require the Applicant to seek a modification from the Board and, if that were to occur, the Board would consider the sufficiency of those conditions.

VOTE: 3-1-1 (Marnique Y. Heath, Anita Butani D’Souza, and Frederick L. Hill to APPROVE in part and DENY in part; Marcie I. Cohen to Approve by absentee ballot; Jeffrey L. Hinkle abstaining).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: February 21, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19560 of Adam Ross and Peng Wu, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 205.5 from the rear yard requirements of Subtitle E § 205.4 to allow a two-floor rear addition to an existing principal dwelling in the RF-1 Zone at premises 1739 Harvard Street, N.W. (Square 2588, Lot 160).

HEARING DATE: October 4, 2017
DECISION DATE: November 15, 2017

DECISION AND ORDER

This self-certified application was submitted on June 15, 2017 on behalf of Adam Ross and Peng Wu, the owners of the property that is the subject of the application (the “Applicants”). The application requested special exception relief to allow a two-floor rear addition to an existing principal dwelling, not meeting requirements for rear additions in the RF-1 district at 1739 Harvard Street, N.W. (Square 2588, Lot 160). After a public hearing, the Board of Zoning Adjustment (the “Board” or “BZA”) voted to grant the application at a decision meeting on November 15, 2017.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated August 18, 2017, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 1, as well as the Chairman and the four at-large members of the D.C. Council; Advisory Neighborhood Commission 1D (the “ANC”), the ANC in which the subject property is located; ANC 1C, because the subject property is located on a street that serves as a boundary line between ANC 1D and 1C; and Single Member District Commissioner for ANC 1D05. Pursuant to 11 DCMR Subtitle Y § 402.1, on August 18, 2017 the Office of Zoning mailed letters providing notice of the hearing to the Applicants, the Councilmember for Ward 1, ANC 1D, ANC 1C, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on August 18, 2017 (64 DCR 8214).

Party Status. The Applicants and ANCs 1D and 1C were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Bryan Thompson and Susanne Rinner, the owners of the residence abutting the subject property

to the west. (Exhibit 37.) The Board denied the request of Steve Roberts, who resides four houses away. (Exhibit 36.)

Applicants' Case. The Applicants provided evidence and testimony about the planned addition, and asserted that the proposal would satisfy all requirements for approval of the requested zoning relief. The Applicants revised their plans several times. The plans showing the final design were submitted as Exhibits 80 and 81. The Applicants submitted a shadow study for the final design as Exhibit 82.

OP Reports. OP submitted two reports in this case. In the first, dated September 22, 2017, the Office of Planning stated that it could not make a recommendation on the application because information was lacking on the special exception criteria set forth in Subtitle E § 5201.3 (a) and (b), and requested shadow studies from the Applicants. The report analyzed the remaining special exception criteria, and concluded that the Applicants satisfied them. (Exhibit 39.) In a supplemental report dated October 30, 2017, OP stated that it reviewed the Applicants' shadow studies and revised plans, concluded that the additional information provided a sufficient basis for it to assess whether the application meets the special exception criteria, and recommended approval of the revised application. (Exhibit 71.)

DDOT. By memorandum dated September 22, 2017, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 40.)

ANC Reports. ANC 1D submitted two reports. The first, dated September 27, 2017, stated that the ANC voted to recommend that the Board postpone the hearing, and request updated burden of proof statements from the Applicants that directly address the concerns raised by residents within a 200-foot radius of the subject property. (Exhibit 46.) The second, dated October 24, 2017, stated that the ANC voted to recommend that the Board deny the application because it concluded granting the relief would have a substantially adverse effect on the use or enjoyment of abutting or adjacent dwelling or property. The resolution attached to the letter stated that the ANC, in reaching this conclusion, had two issues and concerns. First, immediately adjoining neighbors have expressed opposition to this application. Second, the rear lots on the stretch of Harvard Street, N.W. that contain the subject property are narrow and shallow. As a result, the proposed addition will have a more pronounced effect on adjacent properties than it would if they had larger backyards. (Exhibit 58.) ANC 1C did not submit a report.

Party in Opposition. The party in opposition contended the proposed addition would block a portion of the light and air available to their rear yard, increase the probability of water damage, and impact the privacy, use, and enjoyment of their adjoining property located at 1737 Harvard Street, N.W. The party in opposition contended that because the row of homes that includes the subject property is composed of small homes, on narrow lots, with the homes positioned close to the rear of the lot, the addition created an undue impact on their property. They also argued that there were other options available to the Applicants to develop their property. The party submitted a shadow study that reflected an earlier iteration of the Applicant's proposed addition that was slightly larger than the final design. (Exhibit 76.)

Person in support. The Board received a letter from Joe McReynolds, who resides at 1755 Harvard Street, N.W. The letter stated that he lives next to the largest “popback” rear addition on the row of identical houses. He stated that the rear addition adjacent to his property is larger than the addition proposed in this application, and that the impact of the addition is “minimal” and makes no difference on his quality of life.

Persons in opposition. The Board received letters and testimony from persons in opposition to the application. The persons in opposition objected that rear additions that exceed the matter-of-right limit would negatively impact neighboring properties and should be denied.

FINDINGS OF FACT

1. The subject property is located on the north side of Harvard Street, N.W. (Square 2588, Lot 160).
2. The subject property has a rectangular shape. It is 15 feet wide and approximately 128 feet deep.
3. The subject property is improved with an attached building used as a principal dwelling.
4. The building has three stories above grade in the front and two in the back. The lot abuts an alley at the rear and there is a parking space at the rear of the lot.
5. The front of the building faces south, and the rear yard faces north.
6. The subject property is located on a sloping grade. Because the grade slopes up from the front to the back of the lot, the first story of the building is completely above grade in the front and completely below grade in the rear.
7. The rear of the subject property is not visible from Hobart Street, N.W.
8. The subject property is part of a row of simultaneously constructed, nearly identical, modernist brick row dwellings with staggered front and rear facades. The front and rear facades of the building to the east are aligned with those of the subject property. The front facade of the building to the west is set back approximately four feet, and the rear facade extends approximately two feet beyond that of the subject property.
9. The existing rear wall of the existing building on the subject property has windows facing the rear yard.
10. The Applicants propose to construct a two-story rear addition. The addition would extend 13 feet on the second floor from the existing rear wall of the building to enable the existing kitchen, dining room and relocated living room to be on the same floor, which is at grade level in the rear because of the slope. The addition would extend the third floor, which is the second floor above grade in the rear, by 11 feet to enable construction of a

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new bedroom. The addition would extend 13 feet beyond the rear wall of the building to the east on the second floor and 11 feet beyond on the third floor. The addition would extend ten and eight feet, respectively, past the second and third floors of the house to the west. (Exhibits 39, 80-81.)

11. There will be no windows on either side wall of the addition. The rear wall will include windows directly facing the rear yard. (Exhibit 39.)
12. The Applicants submitted their final revised plans on November 7, 2018, (Exhibits 80, 81) along with shadow studies for the addition shown in the revised plans. (Exhibit 82.)
13. The revised plans show the total lot occupancy for the existing building and addition will be 34.4%. (Exhibit 81.)
14. The Applicants' shadow studies show:
 - (a) at no time of the year would either a by-right addition or the proposed addition cast any new shadows on the face of the houses to the east or west, or those nearby, because the north-facing rear walls are already in shadow under existing conditions;
 - (b) some shadow is currently cast in rear yards during the spring, summer and fall by existing buildings, fences, chimneys and – for some properties – by adjacent one-story additions;
 - (c) new shadows cast by the Applicants' proposed addition would be limited to the rear yards of adjacent houses;
 - (d) during the autumnal and vernal equinoxes, the shadow cast by the proposed addition beyond the shadow cast by a by-right addition would be: minimal during mid-day; be increased somewhat, on 1741 Harvard Street's rear yard at 9:00 a.m., and would be minimally increased on 1737 Harvard Street's rear yard at 4:00 p.m.;
 - (e) on the longest day of the year, June 21, the shadow cast by the portion of the proposed addition that is deeper than what would be permitted by-right would also be negligible during mid-day, though there would be a greater increase in the shadowing of 1741 Harvard Street's back yard at 9:00 a.m. and a similar increase on 1737 Harvard Street's back yard at 4:00 p.m.
15. There are existing one-story rear additions at 1709, 1711, 1715, 1727, 1735 1745, 1747, 1749 and 1761 Harvard Street and two-story rear additions at 1725 and 1757 Harvard Street. These additions range from approximately five feet to approximately 16 feet in depth.
16. The subject property is located in an RF-1 Zone, where applicable zoning provisions are intended, among other things, to recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of

housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city. (Subtitle E § 100.3(a).)

17. The purpose of the RF-1 Zone is to provide for areas predominantly developed with attached row houses on small lots within which no more than two dwelling units are permitted. (Subtitle E § 300.1.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception pursuant to 11 DCMR Subtitle X, Chapter 9, under Subtitle E § 205.5, from the rear addition requirements of Subtitle E § 205.4, to allow a two-floor rear addition to an existing principal dwelling in the RF-1 Zone at premises 1739 Harvard Street, N.W. (Square 2588, Lot 160).

The Board is authorized under § 8 of the Zoning Act (D.C. Official Code § 6-641.07(g)(2) (2018 Repl.)) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11-X DCMR § 901.2.)

Subtitle E § 205.5 provides that the Board may approve a rear wall of an attached or semi-detached dwelling that extends farther than ten feet beyond the farthest rear wall of any principal residential building on adjacent property as a special exception pursuant to Subtitle X, Chapter 9, and as evaluated against the criteria of Subtitle E §§ 5201.3 through 5201.6.

Pursuant to Subtitle E § 5201.3, an applicant for a special exception must demonstrate that the addition will not have “a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property”. In particular, the applicant must demonstrate that the addition will not “unduly affect” the light and air available to neighboring properties, (Subtitle E § 5201.3(a),) and that the privacy of use and enjoyment of neighboring properties will not be “unduly compromised.” (Subtitle E § 5201.3(b).) The planned addition, as viewed from a street, alley, and other public way, must not “substantially visually intrude on the character, scale, and pattern of houses along the street frontage.” (Subtitle E § 5201.3(c).)

Based on the findings of fact, the Board concludes that the application satisfies those requirements for special exception relief.

The proposed addition will not unduly affect the light and air available to neighboring properties because of the very modest scope of the relief requested and the fact that it extends back into the north facing the rear yard.

The first level of the addition would extend three feet beyond by-right limit on the house’s second floor, which is at ground level due to the upward slope of a hill from the front to the back

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of these properties. The second level of the addition would extend one foot beyond the by-right limits on the house's third floor. This is a small amount of relief. The addition will be on the north side of the building, reducing its impact on light because the rear yards are already in shadows cast by the existing buildings. Accordingly, the impact of this relief on neighboring properties is quite small.

The sun studies further support the Board's conclusion that the impact of the relief on the light and air available to neighboring properties will be quite small. At no time of the year would either a by-right addition or the proposed addition cast any new shadows on the face of the houses to the east or west, or those nearby, because the north-facing rear walls are already in shadow under existing conditions. Some shadow is currently cast in rear yards during the spring, summer and fall by existing buildings, fences, chimneys and – for some properties – by adjacent one-story additions. New shadows cast by the Applicants' proposed addition would be limited to the rear yards of adjacent houses. During the autumnal and vernal equinoxes, the shadow cast by the proposed addition beyond the shadow cast by a by-right addition would be: minimal during mid-day; be increased somewhat, but not unduly, on 1741 Harvard Street's rear yard at 9:00 a.m., and would be minimally increased on 1737 Harvard Street's rear yard at 4:00 p.m. On the longest day of the year, June 21, the shadow cast by the portion of the proposed addition that is deeper than what would be permitted by-right would also be negligible during mid-day. While there would be a greater increase in the shadowing of 1741 Harvard Street's rear yard at 9:00 a.m. and a similar increase on 1737 Harvard Street's rear yard at 4:00 p.m., the overall effect of the shadows created from the deeper-than-by-right portion of the addition would be small.

The proposed addition will not unduly compromise the privacy of use and enjoyment of neighboring properties. There are no windows on either side of the proposed addition and no terrace off the upper floor. There is also no significant increase in the percentage of fenestration in the rear wall.

The planned addition, as viewed from a street, alley, and other public way, will not substantially visually intrude on the character, scale, and pattern of houses along the street frontage. The addition would not be visible from Harvard Street or Hobart Street, but would be visible from the alley at the rear. There are already one-story rear additions at 1709, 1711, 1715, 1727, 1735, 1745, 1747, 1749 and 1761 Harvard Street, and two-story rear additions at 1725 and 1757 Harvard Street. These additions range from approximately five feet to approximately 16 feet in depth.

Consistent with Subtitle E § 5201.3(d), the Applicant has provided graphical representations, including plans, photographs, and drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways.

The lot occupancy of the new and existing structures on the lot is 34.4%; thus, it is well within the 70% limitation of Subtitle E § 5201.3(e). The Board does not require any special treatment in the way of design, screening, exterior, or interior lighting, building materials or other features for the protection of adjacent and nearby properties in this case because it does not believe any of

these are necessary. The application therefore complies with Subtitle E § 5201.4. The use of the addition is conforming and therefore the application complies with Subtitle E § 5201.5. The proposed height and number of stories of the addition conforms with the matter-of-right zoning limits, and therefore the application complies with Subtitle E § 5201.6.

In accordance with Subtitle X § 901.2, the Board concludes that approval of the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. Approval of the requested special exception will be in harmony with the purpose of the RF-1 Zone, and consistent with the intention of provisions applicable in the RF-1 Zone to recognize and reinforce the importance of neighborhood character, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city. The Board does not find that the rear addition will create any adverse impacts on the use of neighboring properties.

Great Weight to OP and ANC

The Board is required to give “great weight” to the recommendation of the Office of Planning. D.C. Official Code § 6-623.04 (2018 Repl.). For the reasons discussed above, the Board concurs with OP’s recommendation that the application should be approved in this case.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. Section 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)(3)(A) (2018 Repl.)). In this case, ANC 1D expressed two issues and concerns in its reports. First, immediately adjoining neighbors opposed this application. Second, the rear lots that contain the subject property and its adjacent neighbors are relatively narrow and shallow, such that an addition will have a more pronounced effect on these properties than it would on properties with larger rear yards.

The Board does not find this advice persuasive because, for the reasons discussed above, it concludes that the Applicants have met their burden of showing that the proposed addition met the specific special exception standards for approval. The arguments presented by the neighbors who opposed the application were not compelling because the impact on neighboring properties will be minor. While it may be true that the impact of the addition on neighboring properties will be greater than if it were added to a property with a wider and deeper lot, the actual effect of this addition on neighboring properties will be very small.

The opposition party similarly contended that because the subject property is in a row composed of small homes, on narrow lots with the homes positioned close to the rear of the lot, the addition created an undue impact on their property. The opposition party also argued that there are other options available to the Applicants to develop their property. For the reasons discussed above, the Board concludes that the Applicants have met their burden of showing that the addition met

the special exception criteria, despite the size and shape of the lots and positioning of the buildings. The existence of other potential options is not included in the applicable special exception test.

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 205.5 from the rear yard requirements of Subtitle E § 205.4 to allow a two-floor rear addition to an existing two-story principal dwelling in the RF-1 Zone at premises 1739 Harvard Street, N.W. (Square 2588, Lot 160).

Accordingly, it is **ORDERED** that the application is **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 80 - PROPOSED UPDATED ARCHITECTURAL PLANS AND ELEVATIONS AND EXHIBIT 81 - UPDATED ELEVATIONS.**

VOTE: 4-0-1 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Peter G. May to APPROVE; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: February 15, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19586 of GH Group LLC, pursuant to 11 DCMR Subtitle X § 901.2 for a special exception pursuant to Subtitle I § 205.5 from the rear yard requirements of Subtitle I § 205.1, to construct a new 12-story mixed-use residential building in the D-5 Zone at premises located at 100 K Street, S.E. (Square 738, Lot 26).

HEARING DATES: October 11, 2017 and November 8, 2017
DECISION DATE: December 13, 2017

DECISION AND ORDER

On July 26, 2017, GH Group LLC, the property owner of the subject premises (the “Owner” or the “Applicant”) submitted an application for special exception relief to allow the construction of a new mixed-use building located at 100 K Street, S.E. On December 13, 2017, for the reasons explained below, the Board of Zoning Adjustment (the “Board” or “BZA”) voted to approve the application. In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated August 31, 2017, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Councilmember for Ward 6; Advisory Neighborhood Commission (“ANC”) 6D, the ANC for the area within which the subject property is located; and the single-member district ANC 6D-02. Pursuant to 11-Y DCMR § 402.1, on August 31, 2017, the Office of Zoning mailed notice of the hearings to the Applicant, ANC 6D, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on August 25, 2017 (64 DCR 8413). The hearing was originally scheduled for October 11, 2017, but the Applicant requested a postponement as requested by the ANC.

ANC Report. ANC 6D, an automatic party to this proceeding, submitted a report regarding the application. In its report, dated October 30, 2017, the ANC indicated that at a regularly scheduled monthly meeting with a quorum present, the ANC voted 5-0-0 to recommend denial of the application. (Exhibit 40.) The ANC submitted a second report to the record on December 6, 2017, which continued to recommend denial of the Application. (Exhibit 48.)

OP Report. In its memoranda dated October 27, 2017, the Office of Planning recommended approval of the requested relief. (Exhibit 39.) OP noted that the proposal is in harmony with the

general purpose and intent of the zoning regulations and zoning maps because the relief would facilitate the development of this unique small property with a new residential building consistent with the intent of the regulations.

OP also noted that the proposal would not tend to affect adversely the use of neighboring property. While the proposal would affect some at-risk windows on the adjacent apartment building at 909 New Jersey Avenue, S.E., the number of windows is relatively small, and they were installed at risk, therefore the use of the residential building on the neighboring property would not be adversely affected to an undue degree. The report also noted that the inclusion of these at-risk windows was not required to make the units legal or habitable, rather it simply facilitated 2-bedroom use of these units. That configuration exceeded what would have been permitted had the at-risk windows not been added. Further, the use of the neighboring property is not unduly adversely affected, but rather would “revert” to its permitted unit configuration based on by-right windows.

OP submitted a supplemental report on December 6, 2017. (Exhibit 49.) It continued to recommend approval of the Application and elaborated on how the at-risk windows in question could not count toward natural light, ventilation, or smoke control requirements.

DDOT Report. By memoranda dated October 27, 2017, DDOT indicated it had no objection to the approval of the application, noting that the proposal will have no adverse impacts on travel conditions of the District’s transportation network. (Exhibit 38.) As a condition of its approval, DDOT requested that the Applicant add two short-term bike spaces. The Applicant agreed to add these spaces. DDOT also stated in its report that the zoning regulations do not call for any loading berths or require that service spaces be provided since the building has fewer than 50 units.

Request for Party Status. The Board received a request for party status in opposition from 909 New Jersey Avenue Acquisition LLC (the “Party Opponent”), the owner of 909 New Jersey Avenue, S.E., dated October 11, 2017. (Exhibits 30-31.) The Party Opponent argued that the Applicant had not met its burden of proof and that the proposed building would impact light, air, and ventilation to twenty windows on its building.

The Applicant did not object to the granting of party status, and at the hearing on November 8, 2017, the Board granted the opponent’s request for party status.

Persons in Support/Opposition. Matthew Kypta, a tenant from the adjacent property at 909 New Jersey Avenue, S.E., appeared at the hearing to testify in opposition to the application. He also submitted a statement in opposition on November 8, 2017. (Exhibit 44.) Mr. Kypta was primarily concerned about construction impacts and the impact on the common outdoor area. Mr. Kypta did not say where his unit was located in the building or how granting relief would affect his unit. He claimed to represent all the tenants but did not present any authorization to that effect.

Applicant's Case. The Applicant provided evidence and testimony from Essam Ghalayini, Principal of GH Group, LLC, the owner of the subject property. The Applicant also provided evidence and testimony from Moe Fridy, Principal of Citadel, the project architect. The evidence and testimony described how the proposed project met the general and specific special exception requirements.

FINDINGS OF FACT

The Subject Property and Nearby Properties

1. The subject property is located at 100 K Street, S.E. (Square 738, Lot 26).
2. The subject property is a small rectangular parcel measuring 2,186 square feet in land area.
3. The subject property is located in the D-5 Zone District.
4. The subject property is currently improved with a single-story automobile service station.
5. Abutting the subject property to the south and west are K Street, S.E. and 1st Street, S.E.
6. Abutting the subject property to the east and north is the adjacent building at 909 New Jersey Avenue, S.E. (the “909 New Jersey building”).
7. The only adjacent property is the 909 New Jersey building, which is a residential apartment building. That property and the subject property are the only two properties that make up Square 738.

The Proposal and BZA Application

8. The BZA Application was submitted on July 26, 2017, under the 2016 Zoning Regulations, as an application for special exception relief from the rear yard requirements of the D-5 Zone District pursuant to 11-I DCMR § 205.5.
9. The original hearing was scheduled for October 11, 2017; however, at the Applicant's request, the Board postponed the hearing date to November 8, 2017, to allow the Applicant to revisit the Advisory Neighborhood Commission (“ANC”) 6D, which had stated to the Applicant that it would not vote on this Application prior to October 11, 2017.
10. The Applicant is proposing to raze the existing automobile service station on the subject property and construct a new 12-story building with retail on the ground floor and residential units on the upper floors.

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The Required Zoning Relief

11. A property in the D-5 Zone is required to provide a minimum rear yard of 2.5 inches per one foot of height, and at least 12 feet. (11-I DCMR § 205.1.)
12. The proposed project will not provide a rear yard, as required by Subtitle I § 205.1.
13. Subtitle I § 205.5 provides for special exception relief from the rear yard requirements of the D-5 Zone, subject to certain enumerated criteria.
14. The Applicant is proposing to construct windows on the north, south, and west elevations of the proposed building on the subject property. None of these windows will be located within 40 feet of another facing building.
15. The subject property will be used for residential and retail purposes.
16. The adjacent property does not contain any office use. Accordingly, no window to an office use will be located within 30 feet of another facing office building, nor 18 feet in front of a facing blank wall.
17. The closest facing windows are located over one-hundred feet from the windows on the proposed building. (Exhibit 47B.) Accordingly, the windows are located at a sufficient distance to provide adequate light and privacy to habitable rooms as determined by the angle of sight lines and the distance of penetration of sight lines into such habitable rooms. (Exhibit 47C.)
18. The Applicant is not required to provide parking or loading for the proposed development.
19. The Applicant is not required to provide inclusionary zoning units for the proposed development.
20. The purpose of the D-5 Zone is to promote high-density development of commercial and mixed uses. (11-I DCMR § 538.1.) Accordingly, the proposal is in harmony with the general purpose and intent of the zoning regulations and zoning maps, as the Applicant is providing a new mixed-use development in place of an automobile service station.
21. The proposed building will close 30 at-risk windows, involving just 10 residential units in the adjacent apartment building of the 237. The impact will be limited to turning those 10 two-bedroom units into 10 one-bedroom plus den units. Accordingly, the proposal does

not tend to affect adversely the use of neighboring property, as the units can be used in the same way as they had previously been used.

At-Risk Windows

22. The term “at-risk” is a colloquial term used to describe those windows which are constructed less than 10 feet from an interior lot line.
23. Once an adjacent building is constructed on the shared lot line, the previously constructed windows (openings) are no longer permitted because they would not meet the required fire separation distance of 10 feet, as noted in Building Code Supplement of 2013, 12-A DCMR Section 705.8.7.
24. Accordingly, at that point, the Building Code Supplement of 2013, 12-A DCMR Section 705.8.7.5¹ states that the owner of a building with windows (openings) that were previously constructed with less than the permitted fire distance has the responsibility to close those windows (openings) in the event that a building is constructed on the shared lot line.
25. The windows that would be blocked by the proposed building are all at-risk windows because they were built on a shared interior lot line and are “at-risk” of closure in the event that an adjacent building is constructed on the shared interior lot line.
26. According to the Office of Planning, the owner of the 909 New Jersey building has no right to these windows,² and the windows cannot count towards natural light or natural ventilation.
27. The Applicant, the Office of Planning, and the Party Opponent all agree that the windows are at-risk windows.

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief under Subtitle I § 205.5 of the Zoning Regulations from the rear yard requirements of the D-5 Zone in Subtitle I § 205.1. The D-5 Zone requires that an Applicant provide a rear yard based on the height of the building, but which measures at least 12 feet. Due to the small size of the lot and the necessary core factor, the

¹ This provision of the Building Code was submitted as Exhibit 47F.

² The Office of Planning stated in its report that the opponent created a unit configuration “which ultimately exceeded what would have been permitted had the at-risk windows not been added. Consequently, the use of the neighboring property is not unduly adversely affected, but rather it would ‘revert’ to its permitted unit configuration based on by-right windows.” (Exhibit 39.)

Applicant cannot provide a rear yard. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (11-X DCMR § 901.2.)

The Board's discretion in reviewing an application for a special exception is limited to a determination of whether an applicant has complied with the requirements of the specific special exception criteria and the general criteria found in 11-X DCMR § 901.2 of the Zoning Regulations. If an applicant meets its burden, the Board ordinarily must grant the application. *See, e.g. Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973); *Washington Ethical Society v. District of Columbia Bd. of Zoning Adjustment*, 421 A.2d 14, 18-19 (D.C. 1980); *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981); *Gladden v. District of Columbia Bd. of Zoning Adjustment*, 659 A.2d 249, 255 (D.C. 1995).

Pursuant to Subtitle I § 205.5, a special exception for a rear yard may be granted if the Application meets both the general and specific special exception requirements.

The specific requirements of Subtitle I § 205.5 are as follows: (a) No window to a residence use shall be located within 40 feet of another facing building; (b) No window to an office use shall be located within 30 feet of another facing office window, nor 18 feet in front of a facing blank wall; (c) A greater distance may be required between windows in a facing building than the minimum prescribed in (a) or (b) if necessary to provide adequate light and privacy to habitable rooms as determined by the angle of sight lines and the distance of penetration of sight lines into such habitable rooms; and (d) The building shall provide for adequate off-street service functions, including parking and loading areas and access points.

Facing Windows to an Apartment Building

The first enumerated requirement of Subtitle I § 205.5 is that no window to a residence use shall be located within 40 feet of another facing building. Both the proposed building and adjacent building are residential buildings. The Board reviewed previous case law to determine what it means to be "facing."

In BZA Application No. 18621, the applicant requested special exception relief from the minimum rear yard setback requirements in order to construct an addition to an existing office building at 901 16th Street, N.W./1595 I Street, N.W. The adjacent property, 1575 I Street, N.W. was already improved with an office building and had a wall of at-risk windows on its western façade. The applicant in that case proposed to extend the addition to the property's eastern-most lot line, which would cover nearly the entire western façade of the adjacent building, including many at-risk windows. The situation is strikingly similar to the present case: the existing and

proposed buildings are situated in a nearly identical fashion as in the present case – at an angle of 90 degrees. And in each case, the proposed addition covers some at-risk windows, with remaining windows at 90-degree angles from the proposed building’s windows. Both applicants applied for the same special exception relief from the rear yard setback requirements. The Board granted the requested relief, with Office of Planning support, finding that “the special exceptions would not adversely affect the use of neighboring properties.” This case is distinguishable from the present case in that the proposed addition in BZA Application No. 18621 covered nearly one-third of the building’s entire existing windows, whereas the proposed Building in the current case will only partially affect ten units (out of 237 units in the building). The Applicant submitted a diagram of the buildings in that case, found in Exhibit 43, Page 14.

In its report, the ANC raised concerns over the location of the windows, stating they believed that the windows on the northern face of the subject property were less than 40 feet from the southern facing windows in the mid-section of the 909 New Jersey building. In its prehearing statement the Party Opponent also noted that the Applicant had not provided anything in the record to show that this requirement had been met. At the hearing on November 8, 2017, the Board requested that the Applicant submit a diagram showing the distance of the proposed and existing windows. In its submission on November 29, 2017, the Applicant has submitted evidence to the record demonstrating the relationship between the windows on the two buildings. The proposed windows in the residential units on the subject building are at least 40 feet from the window-bay of the 909 New Jersey building.

In its report, the Office of Planning stated “there are no directly facing windows into the proposed residences. The windows in the original proposal, closet to the existing building’s bay projection windows, have been removed at the ANC’s request.” At the hearing, the Board requested clarification on this point from Bryan Golden from the Office of Planning. Mr. Golden stated that the Office of Planning did not consider the window bay to be “facing” because it was not on a directly facing wall.

Based on the testimony of the Office of Planning, and case law provided by the Applicant, the Board has determined that the window bay of the 909 New Jersey building is not considered “facing.” The closest “facing” windows are over 100 feet to the north of the proposed north façade. Regardless, the Applicant has now submitted sufficient evidence demonstrating that the first set of windows on the north façade of the proposed building will be at least 40 feet away from the bay projection. Accordingly, the Application meets the first requirement of Subtitle I § 205.5.

Facing Windows to an Office Building

The second enumerated requirement of Subtitle I § 205.5 is that no window to an office use shall be located within 30 feet of another facing office window, nor 18 feet in front of a facing blank wall. Neither the proposed building or adjacent building have office use. Accordingly, the Application meets the second requirement of Subtitle I § 205.5.

Distances between Sight Lines

The third enumerated requirement of Subtitle I § 205.5 is that a greater distance may be required between windows *in a facing building* that the minimum prescribed in (a) or (b) if necessary to provide adequate light and privacy to habitable rooms as determined by the angle of sight lines and the distance of penetration of sight lines into such habitable rooms. While technically the only “facing” windows are those on the adjacent building’s southern façade, at over 100 feet away, the Applicant has made significant efforts to minimize potential impacts on light and privacy to habitable rooms. The original plans show an additional window bay on the north façade of the proposed building. (Exhibit 3.) The Applicant eliminated that bay after ANC comments regarding privacy.

In its report the ANC again stated its concern that “the proposed subject property windows will have line of sight and views into three columns of existing, not at-risk windows in the 909 NJ Building. Further, some of the proposed Subject Property windows will be only 10 feet from existing windows. The ANC believes that this proximity will adversely impact light, air, and privacy of the existing, adjacent residential units.” (Exhibit 40.)

The Party Opponent also expressed concerns in its prehearing statement as to whether the Applicant had met the burden of proof to show that the windows were at a sufficient distance so as to meet this requirement.

At the hearing on November 8, 2017, the Board asked the Applicant to submit additional renderings demonstrating the relationship between the proposed windows on the north façade of the proposed building and the existing windows at 909 New Jersey Avenue, S.E. The Applicant submitted additional renderings on November 29, 2017, which show that the proposed residential windows on the north elevation are at least 40 feet from the existing windows on the bay projection on the adjacent building. The renderings also show that a person standing and looking out the residential windows on the north elevation will not be able to see the first three rows of windows on the adjacent building. The first set of windows that are within the field of human vision will be 40 feet away from the proposed residential windows, and those windows are not even considered “facing.” The Applicant also submitted photographs of other buildings in the surrounding area. These photographs demonstrate how buildings in a downtown zone are often constructed in close proximity to one another. The existing building at 909 New Jersey Avenue, S.E. is an example of a building where the window distances are well below 40 feet, as demonstrated in Exhibit 43, pg. 19. This information is evidence of what is customary for buildings in a high-density area.

In its report, the Office of Planning stated that “it is not anticipated that the availability of light or privacy would be significantly impacted by the proposed buildings, as demonstrated by the shadow study.”

Based on the photographs demonstrating that buildings in the downtown zones tend to have windows in close proximity, based on the fact that the existing 909 New Jersey building has window angles that provide a more direct sight line than those on the proposed building, and based on the report by the Office of Planning, the Board has determined that the proposed windows on the north elevation are at a sufficient distance to provide adequate light and privacy to habitable rooms as determined by the angle of sight lines and the distance of penetration of sight lines into such habitable rooms. Accordingly, the Application meets the third requirement of Subtitle I § 205.5.

Parking and Loading

The fourth enumerated requirement of Subtitle I § 205.5 is that the building shall provide for adequate off-street service functions, including parking and loading and access points. The D-5 Zone does not require parking, and the number of residential units is too low to hit the threshold for loading.

The ANC states in its report that it is “very concerned that the move-ins and move-outs associated with 34 new residential units . . . will create substantial burdens on the neighborhood’s public spaces, e.g. lost parking, blocked sidewalks, impaired visibility for pedestrians, bikes, and drivers, when moving trucks are idling/parked in the street to load and unload residents’ belongings.” (Exhibit 40.)

The Party Opponent did not express concerns over parking and loading in its prehearing submission or during the hearing on November 8, 2017.

At the hearing on November 8, 2017, the Applicant’s architect, Moe Fridy, testified that, based on experience, homeownership turnover in the District of Columbia tends to be five years. Therefore, the Applicant anticipates a total of five to seven move-ins per year.

In its report, the Office of Planning stated that “no parking or loading spaces are proposed with this development, however, neither are required giving the scope of the project in this zone.”

In its report, the District Department of Transportation (“DDOT”) states that “the proposed action will have no adverse impacts on the travel conditions of the District’s transportation network. The proposed action may lead to a minor increase in vehicular transit, pedestrian, and bicycle trips. In addition, the project has the potential to generate minor impact to on-street parking conditions in the area. Vehicle parking demand may increase slightly as a result of the project, inducing a higher level of parking utilization in the immediate area. Despite these minor potential impacts, DDOT has no objection to the approval of the requested special exception.” (Exhibit 38.) DDOT also addressed concerns over move-ins and move-outs, stating, “the zoning regulations do not call for any loading berths or service spaces to be provided since the building has fewer than 50 units. Residents may apply for ‘emergency no parking’ signs to reserve

curbside parking spaces for move-ins and move-outs.” (Exhibit 38.) DDOT also requested that the Applicant provide two short-term bike parking spaces, which the Applicant has agreed to do.

Based on the testimony from the Applicant, the report by OP, and the report by DDOT, the Board finds that the project does not require any additional parking and loading. It is common practice to load and unload in public space in the downtown zones and condo buildings have a lower rate of turnover than apartment buildings. In this case, the Applicant expects to have an average of five to seven move-ins per year. Accordingly, the Application meets the fourth requirement of Subtitle I § 205.5.

General Special Exception Requirements

The Application must also satisfy the general special exception criteria of Subtitle X § 901.2 which states that the Board is authorized to grant special exception relief where, in the judgement of the Board, the special exception “will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;” and “will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.”

As discussed below, the Application meets the general special exception criteria.

In harmony with the general purpose and intent of the zoning regulations

The purpose of the D-5 Zone is to promote high-density development of commercial and mixed uses. (11-I DCMR § 538.1.) Accordingly, the proposal is in harmony with the general purpose and intent of the zoning regulations and zoning maps, as the Applicant is providing a new mixed-use development in place of an auto mechanic shop.

Neither the ANC nor the Party Opponent alleged that the Application was not in harmony with the general purpose and intent of the Zoning Regulations.

In its report, the Office of Planning stated “the proposal is in harmony with the general purpose and intent of the zoning regulations and zoning maps. The relief would facilitate the development of this unique small property with a new residential building consistent with the intent of the zoning regulations.” (Exhibit 39.)

Will not tend to affect adversely the use of neighboring property

The second prong of the general special exception requirements is that the requested relief will not tend to affect adversely the use of neighboring property.

Based on the record, the Board notes that five main impacts/concerns were raised by the Party Opponent, the ANC, and the person in opposition: (1) At-Risk windows; (2) Exterior spaces; (3) Design; (4) Public space and parking; and (5) Window distances and sight lines. Of those alleged

impacts, concerns over public space and parking, and window distances and sight lines, have been addressed above. The remaining alleged impacts are addressed below. For the reasons discussed below, the Board has determined that while there may be some slight impact on the adjacent property, the impact of the requested rear yard relief does not rise to the level of an adverse effect on the *use* of the adjacent property as a residential building.

At-Risk Windows/Impact on Units

The Party Opponent stated in its prehearing submission that the special exception would result in the closure of 20 windows,³ which would result in the loss of light, air, and ventilation to 10 units. However, it is not clear how air or ventilation will be impacted. As of November 29, 2017, the Party Opponent had not yet submitted any information demonstrating these alleged impacts, and such impacts are not apparent.

The Office of Planning determined that closing the windows would not adversely affect the use of the neighboring property. In its report, OP also noted “the proposal would affect some at-risk windows on the existing adjacent apartment building at 909 New Jersey Avenue SE. However, because the number of windows is relatively small and because they were installed as at-risk windows, the use of the residential building on the neighboring property would not be adversely affected to an undue degree.” (Exhibit 39.) At the hearing, the Board asked Mr. Golden from the Office of Planning to give his opinion on the issue of the at-risk windows. Mr. Golden stated, “these are at risk windows and the adjoining property was entitled to build them, but they are at-risk and that was a choice.” The Board asked him to go into more detail about the impact on the existing building and how that was used as part of the analysis. Mr. Golden stated, “the test is adversely impact the use of the neighboring property. So, from a zoning perspective, the use is that of a residential unit, and so whether it’s a two bedroom or one bedroom is not really relevant to our consideration of ‘impacting the use’.” Mr. Golden continued, “those units can still function as residential units, in another case that might be different, but I couldn’t say.” In its second report, OP highlighted the fact that the at-risk windows could not count toward natural light or natural ventilation.

The Party Opponent stated in the hearing that the Applicant provided no explanation for its decision to front on K Street as opposed to 1st Street. At the hearing, the Board asked the Party Opponent if there was any requirement that the Applicant provide options or explanation of which street frontage it picked. The Party Opponent clarified that the Applicant does have the right to choose which frontage, but the point they were trying to make was that “in showing these matter-of-right options [the Applicant] elected a street to show the worst-case scenario.” The Board found that this was the opinion of the Party Opponent and there was nothing in the record to make the assumption that the Applicant was attempting to show the worst-case scenario.

³ Based on the photo submitted by the Applicant on November 29, 2017, it is clear that 30, not 20 windows would be blocked. The calculation of 20 windows was likely a typographical error in the Party Opponent’s prehearing submission.

In its statement and at the hearing, the Party Opponent repeatedly focused on the fact that because a matter-of-right project could be constructed with less impact, the special exception should not be granted. The Board finds that the Party Opponent is using the incorrect standard for special exception relief and confusing it with the standards for variance relief. At the hearing, the Board requested clarification on this point from Bryan Golden from the Office of Planning. Mr. Golden stated, “The matter-of-right options are not something that we consider because we look exclusively at the criteria for special exception and that doesn’t state provision of matter-of-right options.” Mr. Golden continued, “we are only looking at the proposed project and the applicable criteria for relief.” Accordingly, the Board finds that an Applicant is not required to prove that a matter-of-right option is not viable in a case for special exception relief, which is not to say that the proof that matter of right construction would have the same impacts as that permitted by a special exception is irrelevant.

The Applicant also drew a comparison between the Board’s oral deliberation in the remand of Application No. 18878 of Alba 12th Street and the present case and included in its additional submission a chart comparing the two cases. However, the Board noted in its deliberations that Application No. 18878 involved a request for a variance and it is not inclined to view its decision in that case as relevant to the proceedings here. (*See* Transcript of BZA Public Meeting of December 13, 2017 at 12-13, and 16.)

The Party Opponent has not provided concrete evidence as to how the use of the building as a residential building will be so impacted as to rise to the level of an adverse effect.⁴ The requested special exception relief will impact 30 at-risk windows, which will impact only 10 residential units in the adjacent apartment building. There are 237 in the adjacent building, meaning about four percent of the units in the building will be impacted. The impact will be limited to turning those 10 two-bedroom units into 10 one-bedroom plus den units. The Office of Planning stated in its report that the opponent created a unit configuration “which ultimately exceeded what would have been permitted had the at-risk windows not been added. Consequently, the use of the neighboring property is not unduly adversely affected, but rather it would ‘revert’ to its permitted unit configuration based on by-right windows.”

The Party Opponent has no right to these windows, as they were constructed less than 10 feet from an interior lot line. The Board finds that the Party Opponent assumed the risk when constructing the windows and the Party Opponent will have relatively little overall impact from the closure of 30 windows, considering the units are still viable as one-bedroom one-den rentals. Accordingly, the proposal does not tend to affect adversely, the use of neighboring property, as the units can be used in the same way as they had previously been used.

The ANC also stated that they view “the decision by JP Morgan Asset Management to withhold the information on these risks from residents as reckless, unfair, and disrespectful.” However, the

⁴ As of November 29, 2017, the party opponent has noted that it will impact “light, air and ventilation” to those units, and the people living there might have to move, but has not provided concrete evidence as to how air and ventilation will be impacted or that the people living in the apartments will in fact, move.

ANC still opposed the special exception. In its report, the ANC stated that as an advocate for larger residential units in the Navy Yard neighborhood, they were not in favor of the exception because it would turn 10 two-bedroom units into 10 one-bedroom units.

The affected units would not be reconfigured and would still have two full bedrooms; however, for building code and marketing purposes the units would be called one-bedroom, one-den units. Further, the Applicant is providing two-bedroom units that are available for purchase, and is adding family-sized units to the area.

Exterior Space and Impact of Construction

In its report, the ANC raised concerns over the impact of the exterior space. The ANC report states, “the rear yard exception would allow for construction on the property line and, thus, adversely affect the 909 NJ common exterior space by increasing the shade on the exterior space and creating a feeling of being hemmed in.” (Exhibit 40.)

Mr. Kypta, a person in opposition, also noted concerns over construction, shade, and design in his submission on November 8, 2017 and in his testimony during the hearing.

In its report, the Office of Planning stated that “it is not anticipated that the availability of light or privacy would be significantly impacted by the proposed buildings, as demonstrated by the shadow study.” (Exhibit 39.)

The Applicant submitted shadow studies to the record. (Exhibit 43, pp. 29-32.) The shadow studies demonstrate that the additional shadow is limited to one to two hours a day. Julie Ruppert, the property manager for the adjacent property, testified that the pool was open Memorial Day through Labor Day. The shadow studies show that the only impact during the summer months is, at most, an additional eight to 10 feet of shadow, starting at noon. All shadow is gone by 3 p.m. During the fall, there is slightly more shadow starting at noon, but again, all shadow is gone by 3 p.m.

The Party Opponent did not express concerns over the exterior space and the impacts of construction in its prehearing statement or at the hearing.

The Board acknowledges the concerns raised by the ANC and by the person in opposition; however, the exterior space is already abutted on two sides by the Party Opponent’s own building, and the proposed building will not exceed the existing adjacent building in height and bulk. Further, the space will still be fully functional as a pool and communal outdoor space. The impacts of construction are not relevant to the determination as to whether the Application meets the special exception criteria. Based on shadow studies and the Office of Planning’s report, the Board finds that the additional shadow on the exterior space will not adversely affect the *use* of the neighboring property.

Design

Both the ANC and Mr. Kypta commented on the design of the proposed building. The Board finds that this is not relevant to a determination of whether the use of the Application meets the Zoning Regulations, as there are no design criteria enumerated in Subtitle I § 205.5.

Based on the case record, the testimony at the hearing, the additional submissions by the Applicant, and the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under 11-I DCMR § 205.5, to allow an exception from the minimum rear yard requirements of the D-5 Zone.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 37 AND WITH THE FOLLOWING CONDITION:**

1. The Applicant shall provide at least two short-term bicycle parking spaces.

VOTE: 3-0-2 (Carlton E. Hart, Lesylleé M. White, and Michael G. Turnbull to APPROVE; Frederick L. Hill not participating; one Board seat vacant).

FINAL DATE OF ORDER: February 14, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

BZA APPLICATION NO. 19586

PAGE NO. 14

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITION IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITION IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19866 of Serengeti LLC, as amended,¹ pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the Inclusionary Zoning bonus density requirements of Subtitle C § 1001.2(e)(3) and under the new residential development requirements of Subtitle U § 421.1, and pursuant to Subtitle X, Chapter 10, for a variance from the side yard requirements of Subtitle F §§ 306.2 and 306.3, to construct a new, three-unit apartment house in the RA-1 Zone at premises 1637 V Street S.E. (Square 5778, Lot 165).

HEARING DATES: November 28, 2018 and January 9, 2019
DECISION DATE: February 13, 2019

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 46 (Final Revised); Exhibits 14 and 40 (Prior Revised); Exhibit 5 (Original).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 8A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8A, which is automatically a party to this application. The ANC's original report indicated that at a regularly scheduled, properly noticed public meeting on December 4, 2018, at which a quorum was present, the ANC voted 3-0-1 to support the application, under the condition that the Applicant continue to work with the community on the design of the building. (Exhibit 51.) At the public hearing of January 9, 2019, Chair Troy Prestwood and Dorcas Agyei, the Commissioner for 8A05, provided testimony on behalf of the ANC. The ANC submitted a second report, indicating that it considered the Applicant's revised

¹ The Applicant amended the original application to add special exception relief for Inclusionary Zoning bonus density in the RA-1 zone and area variance relief from the side yard requirements of side yard requirements of Subtitle F § 306.3. The caption has been revised accordingly.

plans at its regularly scheduled, properly noticed public meeting on February 5, 2019 and voted 6-0-0 in support. (Exhibit 58.)

The Office of Planning (“OP”) submitted a timely report recommending approval of the application, subject to certain site and building plan alterations. (Exhibit 49.) In a supplemental report, OP noted that the Applicant submitted plans that incorporated all requested changes aside from one, for which the Applicant provided sufficient justification as to why they could not readily comply. (Exhibit 57.) The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the application. (Exhibit 32.)

At the public hearing on January 9, 2019, Ari Theresa testified in opposition.

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for an area variance from the side yard requirements of Subtitle F §§ 306.2 and 306.3. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under the Inclusionary Zoning bonus density requirements of Subtitle C § 1001.2(e)(3) and under the new residential development requirements of Subtitle U § 421.1. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board

further concludes that any other specified conditions for special exception relief have been met, pursuant to Subtitle X § 901.2(c).

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 55.**

VOTE: 3-0-2 (Frederick L. Hill, Lorna L. John, and Lesylleé M. White to APPROVE; Carlton E. Hart and Robert E. Miller not participating.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: February 14, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

BZA APPLICATION NO. 19866

PAGE NO. 3

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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19915 of Martin Hardy, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the residential conversion requirements of Subtitle U § 320.2 and under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5, and pursuant to Subtitle X, Chapter 10, for an area variance from the residential conversion requirements of Subtitle U § 320.2(d), to add a third unit to an existing flat and convert it to an apartment house in the RF-1 Zone at premises 1000 Rhode Island Avenue N.W. (Square 337, Lot 19).

HEARING DATE: February 13, 2019
DECISION DATE: February 13, 2019

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 12 (Corrected); Exhibit 9 (Original).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6E, which is automatically a party to this application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on December 4, 2018, at which a quorum was present, the ANC voted 5-0-0 to support the application. (Exhibit 32.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 36.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 37.)

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X §

1002.1 for an area variance from the residential conversion requirements of Subtitle U § 320.2(d). The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under the residential conversion requirements of Subtitle U § 320.2 and under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that any other specified conditions for special exception relief have been met, pursuant to Subtitle X § 901.2(c).

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 40.**

VOTE: 4-1-0 (Frederick L. Hill, Lesylleé M. White, Lorna L. John, and Peter A. Shapiro to APPROVE; Carlton E. Hart to oppose)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: February 15, 2019

**BZA APPLICATION NO. 19915
PAGE NO. 2**

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19921 of Garfield Malcolm, as amended,¹ pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201 from the lot occupancy requirements of Subtitle D § 304.1 and the nonconforming structure requirements of Subtitle C § 202.2, under Subtitle D §§ 306.4 and 5201 from the rear addition requirements of Subtitle D § 306.3, under the penthouse requirements of Subtitle C § 1500.4, and under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502.1(b) and (c), to permit an existing rear addition and to construct a rooftop access penthouse on an existing semi-detached principal dwelling unit in the R-3 Zone at premises 4414 9th Street N.W. (Square 3020, Lot 36).

HEARING DATE: February 13, 2019

DECISION DATE: February 13, 2019

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 43 (Final Revised); Exhibit 22 (Prior Revised); Exhibit 12 (Original).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 4C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on January 9, 2019, at which a quorum was present, the ANC voted 6-0-3 to support the application. (Exhibit 40.) ANC Commissioner for 4C07, Kim Varzi, appeared at the public hearing to testify in support of the application.

¹ The original application was amended to add special exception relief under the penthouse requirements of Subtitle C § 1500.4. (Exhibit 43.) The caption has been revised accordingly.

The Office of Planning (“OP”) submitted a timely report recommending approval of the application, provided that the Applicant reduce the height of the penthouse to 10 feet. (Exhibit 46.) The Applicant did so and submitted revised plans to the record. The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the application. (Exhibit 45.)

The Board received 19 letters of support from neighbors. (Exhibit 9.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under Subtitle D § 5201 from the lot occupancy requirements of Subtitle D § 304.1 and the nonconforming structure requirements of Subtitle C § 202.2, under Subtitle D §§ 306.4 and 5201 from the rear addition requirements of Subtitle D § 306.3, under the penthouse requirements of Subtitle C § 1500.4, and under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502.1(b) and (c). No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that any other specified conditions for special exception relief have been met, pursuant to Subtitle X § 901.2(c).

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 44.**

VOTE: **5-0-0** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Peter A. Shapiro to APPROVE.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: February 15, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

BZA APPLICATION NO. 19921

PAGE NO. 2

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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.

**BOARD OF ZONING ADJUSTMENT
PUBLIC MEETING NOTICE
WEDNESDAY, APRIL 24, 2019
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

TIME: 9:30 A.M.

FOR EXPEDITED REVIEW

WARD FIVE

19991
ANC 5E

Application of James Anderson, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201, from the lot occupancy requirements of Subtitle E § 304.1, and the rear yard requirements of Subtitle D § 306.1, to construct a two-story, rear addition and to convert an existing attached principal dwelling into a two-unit flat in the RF-1 Zone at premises 318 Seaton Place, N.E. (Square 3567, Lot 42).

PLEASE NOTE:

Failure of an applicant to supply a complete application to the Board, and address the required standards of proof for the application, may subject the application or appeal to postponement, dismissal or denial. The public meeting in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Individuals and organizations interested in any application may submit written comments to the Board.

An applicant is not required to attend for the decision, but it is recommended so that they may offer clarifications should the Board have questions about the case.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.*** This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

BZA PUBLIC MEETING NOTICE

APRIL 24, 2019

PAGE NO. 2

The application will remain on the Expedited Review Calendar unless a request for party status is filed in opposition, or if a request to remove the application from the agenda is made by: (1) a Board member; (2) OP; (3) an affected ANC or affected Single Member District; (4) the Councilmember representing the area in which the property is located, or representing an area located within two-hundred feet of the property; or (5) an owner or occupant of any property located within 200 feet of the property.

The removal of the application from the Expedited Review Calendar will be announced as a preliminary matter on the scheduled decision date and then rescheduled for a public hearing on a later date. Notice of the rescheduled hearing will be posted on the Office of Zoning website calendar at <http://dcoz.dc.gov/bza/calendar.shtm> and on a revised public hearing notice in the OZ office. If an applicant fails to appear at the public hearing, this application may be dismissed.

**Note that party status is not permitted in Foreign Missions cases.*

Do you need assistance to participate?

Amharic

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Chinese

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Korean

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회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로

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BZA PUBLIC MEETING NOTICE

APRIL 24, 2019

PAGE NO. 3

Spanish

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FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

FREDERICK L. HILL, CHAIRPERSON
LESYLLEÉ M. WHITE, MEMBER
LORNA L. JOHN, MEMBER
CARLTON HART, VICE-CHAIRPERSON,
NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING

**BOARD OF ZONING ADJUSTMENT
SPECIAL PUBLIC MEETING NOTICE
THURSDAY, FEBRUARY 21, 2019
441 4TH STREET, N.W.**

**JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

TIME: 4:30 P.M.

WARD FIVE

19441 **Motion to Stay the Order Granting the Appeal of Richardson Place**
ANC 5E **Neighborhood Association**, pursuant to 11 DCMR §§ 3100 and 3101, from
decisions made on September 27, 2016 and October 20, 2016 by the Zoning
Administrator, Department of Consumer and Regulatory Affairs, to issue building
permits B1611469 and B1611470, to permit the construction of two adjacent flats
in the R-4 District at premises 410 and 412 Richardson Place N.W (Square 507,
Lots 101 and 102).

PLEASE NOTE:

Failure of an applicant to supply a complete application to the Board, and address the required standards of proof for the application, may subject the application or appeal to postponement, dismissal or denial. The public meeting in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Individuals and organizations interested in any application may submit written comments to the Board.

An applicant is not required to attend for the decision, but it is recommended so that they may offer clarifications should the Board have questions about the case.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.*** This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

BZA SPECIAL PUBLIC MEETING NOTICE
FEBRUARY 21, 2019
PAGE NO. 2

**Note that party status is not permitted in Foreign Missions cases.*

Do you need assistance to participate?

Amharic

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Chinese

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Spanish

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BZA SPECIAL PUBLIC MEETING NOTICE

FEBRUARY 21, 2019

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**FREDERICK L. HILL, CHAIRPERSON
LESYLLEÉ M. WHITE, MEMBER
LORNA L. JOHN, MEMBER
CARLTON HART, VICE-CHAIRPERSON,
NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 18-03
Z.C. Case No. 18-03
Dancing Crab Properties, LLC
(Consolidated PUD and Related Map Amendment @ Square 1769)
December 17, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on October 29, 2018, to consider an application for a consolidated planned unit development (“PUD”) and a related Zoning Map amendment filed by Dancing Crab Properties, LLC (“Applicant”). The Commission considered the application pursuant to Subtitle X, Chapter 3 and Subtitle Z of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11-Z DCMR Chapter 400. For the reasons stated below, the Commission **HEREBY APPROVES** the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On March 26, 2018, the Applicant filed an application with the Commission for a consolidated PUD and a related Zoning Map amendment from the MU-4 zone to the MU-5-B zone for property located at 4611-4615 41st Street, N.W. (Square 1769, Lots 1 and 2) (“Site”). The Site has approximately 6,855 square feet of land area and is surrounded by private property to the north and south, 41st Street to the west, and a public alley to the east.
2. The Applicant will develop the Site with a new seven-story apartment house with approximately 41 residential units and restaurant/bar use on the ground floor and in penthouse habitable space. Two of the residential units will be two-bedroom Inclusionary Zoning (“IZ”) units reserved for households earning up to 60% of the Median Family Income (“MFI”), and one of the residential units will be a one-bedroom IZ unit reserved for households earning up to 50% of the MFI. The project (“Project”) will have a maximum building height of 79 feet, four inches, not including the penthouse. The Project will contain approximately 34,535 square feet of total gross floor area (5.04 floor area ratio [“FAR”]), of which approximately 28,762 square feet of gross floor area will be devoted to residential use, approximately 2,450 square feet of gross floor area will be devoted to the restaurant/bar use on the ground floor, and approximately 1,754 square feet of penthouse habitable space will be devoted to the restaurant/bar use on the roof. The Project will contain nine on-site parking spaces and one service-delivery loading space, all accessed from the rear alley.
3. By report dated June 1, 2018 (Exhibit [“Ex.”] 10), the Office of Planning (“OP”) recommended that the Commission set down the application for a public hearing. The OP setdown report requested that the Applicant: (a) confirm the number of IZ units in the Project; (b) provide additional details on the proposed public benefits and amenities package; and (c) provide samples of the building materials.

4. At its public meeting held on June 11, 2018, the Commission reviewed the application, requested additional information from the Applicant on various items, and voted to schedule a public hearing on the application.
5. On July 3, 2018, the Applicant submitted its prehearing submission. (Ex. 11-13.) The prehearing submission included revised architectural drawing sheets and responded to the comments and requests for additional information raised by the Commission at the setdown meeting and by OP in the OP setdown report. Specifically, the Applicant's prehearing submission: (a) confirmed that residents of the Project would not be eligible to obtain residential parking permits ("RPPs"); (b) confirmed that the Applicant was unaware of any other development plans for the block on which the Site is located; (c) provided a close up rendering showing a view of the building's front entrance; (d) provided more information on the rooftop and penthouse space, including detailed drawings and information on the proposed lighting and solar panels; (e) confirmed the requested design flexibility language; (f) clarified the IZ proffer and confirmed that the proffer exceeded the minimum IZ requirement imposed by the Zoning Regulations; and (g) provided more information on mural proposed to be located on the building's south façade. The Applicant also indicated that it was in the process of working with Advisory Neighborhood Commission ("ANC") 3E, the ANC in which the Site is located, on the public benefits and amenities package and would submit a complete list of public benefits prior to the public hearing. The Applicant also stated that it would provide samples of the proposed building materials at the public hearing.
6. On August 28, 2018, the Applicant submitted a Multimodal Transportation Assessment Report, prepared by Wells + Associates. (Ex. 18.) The cover letter submitting the transportation report indicated that the Applicant had also submitted the report to the District Department of Transportation ("DDOT") on August 13, 2018.
7. On September 7, 2018, the Applicant submitted a supplemental prehearing submission which included the following: (a) updated architectural drawings that included renderings of the building within its context, revised landscape and public space plans, and floor plans showing the locations and sizes of the proposed IZ units; (b) a description of the Applicant's proposed public benefits and amenities package; and (c) refined language regarding the requested design flexibility. (Ex. 19.)
8. On September 17, 2018, OP submitted a report recommending approval of the application with conditions. (Ex. 22.)
9. On September 17, 2018, DDOT submitted a report stating no objection to the application with conditions. (Ex. 21.)
10. On September 17, 2018, the Applicant submitted a letter requesting that the Commission postpone the public hearing until October 29, 2018, to give the Applicant additional time to continue working with ANC 3E. (Ex. 23.) The Applicant's request was approved and

notice of the rescheduled public hearing was published in the *D.C. Register* on September 28, 2018. (Ex. 24-26.)

11. On October 22, 2018, ANC 3E submitted a resolution that was passed by a unanimous vote of 5-0-0 and a memorandum of understanding (“MOU”) signed by the Applicant and the ANC setting forth the Applicant’s commitments with respect to the Project’s public benefits and amenities and other mitigation measures. (Ex. 28-28A.) The ANC resolution specifically requested that the Commission incorporate the provisions of the MOU into any order approving the Project.
12. On October 29, 2018, testimony was submitted by Ms. Marilyn Simon stating that: (a) any order approving the application should include a strong and enforceable condition restricting residents of the Project from obtaining RPP(s); and (b) the Applicant’s affordable housing proffer incorrectly calculated the matter-of-right IZ set-aside requirements and therefore the Applicant should be required to increase its affordable housing proffer. (Ex. 30.)
13. On October 29, 2018, testimony was submitted by DC for Reasonable Development: Ward 3 Accountability Group (“DC4RD”) stating that the Project was inconsistent with the Comprehensive Plan for two reasons. (Ex. 33.) First, DC4RD alleged that the amount of affordable housing in the Project could not be deemed a “substantial benefit” and that the lack of family-sized units (three or more bedrooms) was “unacceptable at a time of an affordability crises for families.” Based on these assertions, DC4RD requested that 30% of the residential density in the Project be dedicated to family-sized affordable housing. Second, DC4RD claimed that the Project’s cumulative impacts would have a substantial burden on public services, which had not been sufficiently evaluated as part of the PUD process.
14. After proper notice, the Commission held a public hearing on the application on October 29, 2018. The parties to the case were the Applicant and ANC 3E.
15. At the public hearing, the Applicant submitted a response to Ms. Simon’s written testimony with calculations confirming that its IZ proffer was properly calculated. (Ex. 34.)
16. At the public hearing, OP rested on the record and confirmed its support for the application subject to the following conditions:
 - a. Hours of operation and use of roof must be limited to no later than midnight;
 - b. No live or amplified music permitted on the roof;
 - c. All lighting must be shielded so it is contained to the roof area and turned off by 1:00 a.m. except for any code-required emergency lights; and

- d. The ground-floor restaurant space and rooftop restaurant/lounge should not be considered a proffered benefit.
17. At the public hearing the Applicant proposed the following conditions in response to and instead of OP's suggested conditions: (Ex. 35.)
 - a. The hours of operation and use of the rooftop restaurant/bar shall be limited to those hours authorized by any license(s) issued by the D.C. Alcoholic Beverage Regulation Administration ("ABRA");
 - b. Amplified live music shall not be permitted after midnight outside on the roof. Instrumental or recorded music conveyed via speakers, or other sound system, shall be permitted and shall comply at all times with the requirements of the D.C. Noise Control Act; and
 - c. All lighting will be shielded so it is contained to the roof area and complies with all applicable D.C. Building Code requirements.
 18. At the public hearing, DDOT rested on the record and confirmed its support for the application subject to the following conditions, to which the Applicant agreed:
 - a. Design, fund, and install the proposed curb bulb-outs to facilitate safer pedestrian crossings;
 - b. Fund and install two electric vehicle charging stations;
 - c. Implement a loading management plan that restricts all trucks greater than 30 feet in length from serving the site; and
 - d. Implement the TDM plan proposed in the Applicant's August 13, 2018 transportation report, with the one modification: if an agreement is not reached with a carshare company to provide service in the two reserved carshare spaces prior to the Project's first Certificate of Occupancy, then the Applicant shall offer a \$10 SmarTrip card to each dwelling unit.
 19. At the conclusion of the public hearing the Commission took proposed action to approve the PUD and related Zoning Map amendment. The Commission left the record open only for the three following submissions: (a) an analysis from OP regarding the Applicant's affordable housing proffer; (b) a response from Ms. Simon regarding the Applicant's affordable housing proffer and OP's analysis thereof; and (c) a post-hearing submission from the Applicant, to include a response to OP's and Ms. Simon's post-hearing submissions, a consolidated set of fully updated architectural plans and elevations, and draft Findings of Fact and Conclusions of Law.
 20. On October 31, 2018, the proposed action was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. (Ex. 37.)

21. On November 2, 2018, OP submitted a supplemental report regarding the Applicant’s affordable housing proffer. (Ex. 38.) In that report, OP stated that it “has confirmed that the [A]pplicant’s use of the IZ set aside percentages is correct and consistent with intent and practice.” (Ex. 38, p. 1.) OP referenced 11-X DCMR § 305.2, which provides that the PUD public benefits must be greater than would likely result from development of the site as a matter of right. Under the matter-of-right scenario, OP concluded that the Project would be required to set aside 2,746.03 square feet for IZ units, but that the Project proposes to set aside 3,882 square feet for IZ units, which is 1,136 square feet more than would have be required. Thus, OP concluded that “[t]he 1,136 sq. ft. is the public benefit.” (Ex. 38, p. 1.) OP also indicated that the set aside section in the Zoning Regulations was being clarified in Z.C. Case No. 04-33I.
22. On November 9, 2018, Ms. Simon submitted a response to the Applicant’s affordable housing proffer and OP’s supplemental report, as requested by the Commission at the close of the public hearing. (Ex. 40.) Ms. Simon’s response stated that: (a) the Applicant and OP are using the proposed IZ regulations (Z.C. Case No. 04-33I) rather than the current IZ regulations to calculate the IZ requirements for the Project, which create significantly different IZ requirements; and (b) the Applicant should use the current IZ regulations which do not permit the Project to take advantage of the “reduced” IZ requirement of eight percent GFA or 50% of the bonus density because the Project does not use steel and concrete to frame more than 50% of the dwelling units. Ms. Simon’s supplemental report also commented on and provided proposed language for the RPP restriction proposed by the Applicant. However, the Commission did not request this information from Ms. Simon at the public hearing as it had already addressed and accepted the Applicant’s condition related to RPP restrictions.
23. On November 16, 2018, the Applicant filed its post-hearing submission (Ex. 41), which included: (a) a response to OP and Ms. Simon’s post-hearing submissions regarding the IZ proffer; (b) updated architectural plans and elevations depicting the final design of the enhanced public space improvements negotiated with ANC 3E; and (c) confirmation on the Applicant’s RPP condition. (Ex. 41.)
24. On November 19, 2018, the Applicant filed its final list of proffers and draft conditions pursuant to 11-X DCMR § 308.12.
25. On November 30, 2018, NCPC’s Director of Urban Design and Plan Review submitted a letter stating that the Project was determined to be exempt from NCPC review. (Ex. 43.)
26. The Commission took final action to approve the PUD and related Zoning Map amendment on December 17, 2018.

The Site and Surrounding Area

27. The Site is located in the Tenleytown neighborhood of Ward 3, directly adjacent to the commercial corridor of upper Wisconsin Avenue, N.W. The Site has approximately 6,855 square feet of land area and is surrounded by private property to the north and south, 41st Street to the west, and a public alley to the east. The Site is presently improved with two existing two-story buildings, one of which is operated as the Tenley Bar and Grill. The existing buildings will be razed as part of redevelopment.
28. The area surrounding the Site is generally improved with commercial office, retail, and service uses. To the south of the Site is a mixed-use retail district surrounding the Tenleytown Metrorail station, which is home to a variety of retail, service, and dining establishments, including stores such as Best Buy, CVS, The Container Store, and Whole Foods; fast-casual and full-service restaurants and bars; the Tenley-Friendship Neighborhood Library; The Citizen Heights Church; and various beauty salons, among other uses and commercial establishments. To the south of the Tenleytown Metrorail station is American University. To the north of the Site is the Fort Reno Park and Deal Middle School. To the east of the Site is the Woodrow Wilson High School, and to the west of the Site are additional neighborhood-serving restaurants and bars along Wisconsin Avenue, N.W. Farther to the east and west of the Site are low-density residential neighborhoods.
29. Immediately to the north of the Site is an existing four-story commercial building that is constructed to its southern property line. Immediately to the south of the Site is a parking lot at the corner of Wisconsin Avenue, N.W. and Brandywine Street, N.W. Across Wisconsin Avenue from the Site is a seven-story mixed-use building developed as a PUD pursuant to Z.C. Order No. 10-23, and an existing four-story building that was approved to be converted to an eight-story mixed-use building as a PUD pursuant to Z.C. Order No. 16-26, which had an effective date of March 30, 2018.
30. The surrounding neighborhood is well-served by multiple transportation options. The Tenleytown Metrorail station, which services the red line, is located approximately 0.1 mile to the south of the Site. At least 10 different bus lines are located along Wisconsin Avenue, with bus stops adjacent to the Site. Multiple permanent carshare spaces are located within a half-mile of the Site, serviced by Zipcar and Hertz on Demand, and a Capitol Bikeshare station is located approximately 0.2 miles from the Site. Public sidewalks, crosswalks, and bicycle lanes are also well established in the area.

Existing and Proposed Zoning

31. The Site's existing zoning is MU-4. The application requested a Zoning Map amendment to rezone the Site to the MU-5B zone. Properties on the east and west sides of Wisconsin Avenue, N.W. near the Site are primarily designated as MU districts. The PUDs across Wisconsin Avenue from the Site are zoned MU-7. The Tenleytown mixed-use retail district is zoned MU-7, properties to the north are zoned MU-4, and properties to the south are zoned MU-3, MU-4, and MU-5A. Properties near the Site but not located along Wisconsin Avenue are primarily zoned R-1-B and R-2.

32. Development Under Existing Zoning. The MU-4 zone is intended to permit moderate-density mixed-use development; provide facilities for shipping and business needs, housing, and mixed uses; and be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops and include office employment centers, shopping centers, and moderate bulk mixed-use centers. (11-G DCMR § 400.3.)
33. The MU-4 zone permits a maximum density of 2.5 FAR (1.5 FAR maximum non-residential), 3.0 FAR with IZ, 3.6 FAR as a PUD, and 2.01 FAR maximum non-residential as a PUD. (11-G DCMR § 402.1 and 11-X DCMR §§ 303.3 and 303.4.) The MU-4 zone permits a maximum building height of 50 feet with no limit on the number of stories, 65 feet for a PUD, and a maximum penthouse height of 12 feet (15 feet for penthouse mechanical space) and one story (second story permitted for penthouse mechanical space). (11-G DCMR §§ 403.1 and 403.3 and 11-X DCMR § 303.7.) The MU-4 zone permits a maximum lot occupancy of 60% and 75% with IZ. (11-G DCMR § 404.1.)
34. Development Under Proposed Zoning. The Applicant proposed to rezone the Site to the MU-5B zone to allow for the development of a mixed-use apartment house with ground-floor retail. The MU-5 zones are intended to permit medium-density, compact mixed-use development with an emphasis on residential use. (11-G DCMR § 400.4(a).) The MU-5 zones provide for areas with facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core. (11-G DCMR § 400.4(b).) The MU-5 zones are located on arterial streets, in uptown and regional centers, and at rapid transit stops. (11-G DCMR § 400.4(c).)
35. The MU-5B zone permits a maximum density of 3.5 FAR (1.5 FAR maximum for non-residential uses) and 4.2 FAR with IZ. (11-G DCMR § 402.1.) The MU-5B zone permits a maximum building height of 75 feet with no limit on the number of stories and a maximum penthouse height of 20 feet and one story, with a second story permitted for penthouse mechanical space. (11-G DCMR §§ 403.1 and 403.3.) The MU-5B zone permits a maximum lot occupancy of 80%. (11-G DCMR § 404.1.)
36. A PUD in the MU-5B zone is permitted a maximum density of 5.04 FAR (2.01 FAR maximum for non-residential uses) and a maximum building height of 90 feet. (11-X DCMR §§ 303.3, 303.4, 303.7.)

Project Description

37. As shown on the Architectural Plans and Elevations dated November 16, 2018 (“Architectural Plans”), the Site will be redeveloped with a new seven-story apartment house with approximately 41 residential units and a restaurant/bar on the ground floor and in penthouse habitable space. (Ex. 41A1-41A3.) Two of the residential units will be two-bedroom IZ units reserved for households earning up to 60% of the MFI, and one of the residential units will be a one-bedroom IZ unit reserved for households earning up to 50% of the MFI. The Project will have a maximum building height of 79 feet, four inches, not including the penthouse. The Project will contain approximately 34,535

square feet of total gross floor area (5.04 FAR), of which approximately 28,762 square feet of gross floor area will be devoted to residential use, approximately 2,450 square feet of gross floor area will be devoted to the restaurant/bar use on the ground floor, and approximately 1,754 square feet of penthouse habitable space will be devoted to the additional restaurant/bar use on the roof.

38. The Project will contain nine on-site parking spaces and one service-delivery loading space, all accessed from the rear alley. Five of the parking spaces will be located in an interior parking garage, with two of the five spaces dedicated as electric vehicle charging stations. The remaining four parking spaces will be located at-grade in the rear yard perpendicular to the alley, with two of the four spaces dedicated as car-share spaces. The service/delivery loading space will abut a loading platform that will have direct access to the building's trash room, service area, and service elevator. Although not required, the service/delivery space is being provided to serve the loading needs of the bar/restaurant use. Residential loading facilities are not required for the Project. Long-term interior bicycle parking will be located in the cellar accessed via the building's primary residential entrance and via the rear alley.
39. The building includes expansive storefront windows and glass entry doors along 41st Street that were designed to activate the street level and create a strong physical relationship between interior and exterior spaces. Above the first level, the building façade is organized into three glassy volumes separated by brick piers that celebrate the building's verticality and identify the three apartment units fronting 41st Street on each residential floor. The building is primarily clad in red brick with limestone detailing that creates strong horizontal elements at regular intervals. The residential floors are identified by the uniform treatment of aluminum-clad sawtooth bays on 41st Street and at a large closed court on the east side of the building, which will be visible as the building is approached from the south.
40. The penthouse and roof terrace serve as an extension of the ground-floor bar/restaurant use. The penthouse will be clad in fiber cement panels that correspond with the building's limestone base. The penthouse will have floor to ceiling glazing along the majority of the south and west walls that will provide stunning, panoramic views of the city from inside, as well as connections to the exterior roof deck. A smaller room and separate roof deck will be located on the southeast corner of the roof and will be separated from the main roof deck by the courtyard.
41. The public space streetscape and landscape design for the Project fosters an active and pedestrian-friendly environment. Large planted areas in public space provide greening of the public space between the sidewalk and the face of the building, capture stormwater, and define the residential entry and outdoor restaurant/bar seating areas. The existing red brick pavers in the strip between the curb and the sidewalk will be removed. The curb will be extended out to the bike lane and converted to a bioretention planting area paved plaza with a public art installation and short-term bicycle parking. The painted gore triangle between 41st Street, N.W. and Wisconsin Avenue, N.W. will be raised, and a new curb installed around a planted area. The curb extension, raised gore area will and a new

raised crosswalk will slow traffic exiting Wisconsin Avenue, N.W. onto 41st Street, N.W., narrow the width of the pedestrian crossing and increase pedestrian safety around the site. The new concrete sidewalk in front of the Site will be widened to eight feet to provide a comfortable and safe pedestrian environment. The existing built-in planter in public space north of the Site will be maintained and integrated into the planting area in front of the Project. The area between the sidewalk and the property line will be paved with granite pavers. As set forth below, the Applicant worked closely with ANC 3E and DDOT to enhance the public space improvements such that they are being provided in excess of the standards normally required for public space adjacent to a PUD.

42. The Project is designed to integrate a host of sustainable features and will be designed to achieve LEED-Gold certification under v.4. In addition, the Site is located in a mixed-use, walkable neighborhood with convenient access to public transportation options and existing infrastructure and services. The Project will include a variety of strategies to satisfy the Green Area Ratio (“GAR”) and stormwater management requirements, such as intensive and extensive green roof areas, a bioretention area at the third floor courtyard, permeable paving in the outdoor parking area accessed from the alley, and in-ground planters in public space. The Project will install solar photovoltaic panels on the penthouse roof.

Zoning Flexibility

43. Flexibility to Provide a Restaurant/Bar Use in the Penthouse. The Applicant requested flexibility to provide a restaurant/bar use in the penthouse of the proposed building. Pursuant to 11-C DCMR § 1500.3, a penthouse may house a nightclub, bar, cocktail lounge, or restaurant if approved as a special exception pursuant to 11-X DCMR Chapter 9. In this case, the Commission finds that the proposed restaurant/bar use in the penthouse will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map. The restaurant/bar use will provide a unique and enjoyable dining option for neighborhood residents, including residents of the Project, and will not create any adverse effects given the conditions imposed herein. The penthouse structure itself will comply with all height, bulk, and setback standards set forth in 11-C DCMR § 1500.
44. The Commission also finds that the proposed restaurant/bar use will not tend to affect adversely the use of neighboring property for the following reasons and because of the conditions imposed on its use in this Order. The Site is surrounded by commercial uses in all directions. Directly to the north is a commercial building and directly to the south is a parking lot. Across Wisconsin Avenue to the west are other mixed-use residential and commercial buildings with ground-floor retail, with the closest residential use being the apartment house approved in Z.C. Order No. 10-23, which is approximately 150 feet away from the Site and across Wisconsin Avenue. To the east of the Site, across the alley, are commercial uses. Moreover, the ANC stated that the rooftop restaurant/bar space will “be among, if not the, highest in DC, with a commanding view, rooftop restaurant/bars are popular, and there are currently none in the immediate area.” (ANC Resolution, Ex. 28A, p. 2.) Therefore, the Commission concludes that the proposed

restaurant/bar use in the penthouse will have little or no impact on surrounding residential uses, and will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to adversely affect the use of neighboring property, given the conditions imposed by this Order.

45. Flexibility from the Minimum PUD Land Area Requirement. The Applicant requested flexibility from 11-X DCMR § 301.1, which provides that the minimum land area for a PUD in the MU-5B zone is 15,000 square feet. Pursuant to 11-X DCMR § 301.3, the Commission may waive the minimum PUD land area requirement to no less than 5,000 square feet for applications in Zone Groups 2, 5, and 6,¹ provided the Commission finds that the development is of exceptional merit and is in the best interests of the District of Columbia or the country and achieves one of the standards set forth in 11-X DCMR § 301.3(a)-(c). The criteria of 11-X DCMR § 301.3(c) is that the development is located outside of the Central Employment Area (“CEA”) and at least 80% of the gross floor area of the development is used exclusively for dwelling units and uses accessory thereto.
46. The Commission finds that the Project meets the requirements of 11-X DCMR § 301.3(c) because the Site is located outside of the CEA and approximately 82% of the Project’s gross floor area is dedicated to dwelling units and accessory uses thereto. Moreover, reducing the minimum PUD land area requirement for the Project is in the best interests of the District because it will allow for development of a PUD that includes new housing and affordable housing in an amount greater than the minimum required by the Zoning Regulations, will include larger-sized affordable units, and is located in a mixed-use, walkable, and transit-oriented location that will have a minimal impact on the environment. The Project is also one of exceptional merit due to its associated public benefits and amenities, architectural design, proposed ground-floor commercial uses that will benefit the neighborhood and increase economic development in the area, and improvements to the surrounding public space. The Commission agrees with OP’s analysis as well, where it stated that the Project’s “new housing and its amenities including the two-bedroom IZ units for families at up to 60% median income and the streetscape and public space improvements near the metro station should result in the Project being of an exceptional merit in the best interest of the City.” (Ex. 22, p. 10.) Therefore, the Commission concludes that flexibility from the minimum PUD land area requirements is appropriate in this case.

¹ Per 11-X DCMR § 301.1, the MU-5B zone is within Zone Group 6 for “any other zone.”

Development Flexibility

47. The Applicant also requests flexibility in the following additional areas:
- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - b. To vary the final selection of the color of the exterior materials, within the color ranges reflected in the approved Architectural Plans, without making changes to the exterior 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; and any other changes that do not substantially alter the exterior design necessary to comply with all applicable District of Columbia laws and regulations;
 - c. To provide a range in the number of residential dwelling units of plus or minus 10% from the number depicted on the approved Architectural Plans;
 - d. To make refinements to the parking configuration, including layout, number of parking spaces, and other elements, so long as the number of parking spaces provided is at least the minimum number of spaces required by the Zoning Regulations;
 - e. To vary the location, attributes, and general design of the streetscape incorporated in the Project to comply with the requirements of and the approval by the DDOT Public Space Division;
 - f. To vary the font, message, logo, location, and color of the proposed signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the approved Architectural Plans and compliant with the D.C. signage regulations; and
 - g. To vary the sustainable features of the Project, provided the total number of LEED points achievable for the Project does not decrease below LEED Gold v.4.
48. The Commission concluded the request for design flexibility for exterior materials was overly broad and granted similar, but narrower, design flexibility.

Public Benefits and Amenities

49. Superior Urban Design, Architecture, and Landscaping (11-X DCMR § 305.5(a) and (b)) and Site Planning and Efficient Economical Land Utilization (11-X DCMR § 305.5(c)).

The Project’s architectural character and ground-floor streetscape will be a significant improvement over the existing buildings on the PUD Site and the surrounding neighborhood. The Project will use high quality materials throughout and will incorporate detailing at regular floor intervals to enhance the building’s design and articulate its scale. Tall storefront glazing at the ground floor, an elegant steel and glass canopy at the building entrance, and metal-clad bays with large glass openings will all contribute to the building’s dynamic façade. In addition, extensive landscaping in the public space at the front of the building will define the residential entry and outdoor seating area, and exterior lighting elements will be installed to create a safe and inviting streetscape and an enjoyable pedestrian experience.

50. The building’s third-floor courtyard will be landscaped with a bioretention garden and will provide enhanced views. Areas of intensive and extensive green roof will also be provided.
51. In reviewing the Project, the ANC found that the “new residences and attractive retail space the Project will afford will enhance the vibrance of the neighborhood” (Ex. 28A, pp. 1-2) and OP similarly concluded that the Project’s “landscaping and site planning would significantly improve the pedestrian environment around the site,” and that the infill site is in a transit-oriented area that is “efficiently and economically utilizing land in the District.” (Ex. 22, p. 14.)
52. Housing and Affordable Housing (Subtitle X § 305.5(f) and (g)). The Project results in the creation of new housing and affordable housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Future Land Use Map. The Project will replace an underutilized commercial site with approximately 41 new residential units, three of which will be designated IZ units. The affordable housing proffer exceeds the amount of square footage that would have been required through matter-of-right development under existing zoning. Specifically, the Applicant will dedicate a minimum of 12.7% of the residential gross floor area and including penthouse habitable floor area combined to IZ units (approximately 3,882 square feet of gross floor area). Two IZ units will be reserved for households earning up to 60% of the median family income (“MFI”) and one IZ unit will be reserved for households earning up to 50% of the MFI. The units reserved at 60% of the MFI will each have approximately 1,445 square feet of gross floor area and two bedrooms. The unit reserved at 50% of the MFI will have approximately 992 square feet of gross floor area and one bedroom.
53. In reviewing the IZ proffer, the ANC explained that “like most of the District of Columbia, our neighborhood needs more affordable housing, and especially affordable housing suitable for families,” and commended the Applicant for providing “greater than 25% more affordable housing than would be required under the existing MU-4 zoning, and greater than 50% more affordable housing than would be required under MU-5B zoning, including at least two affordable units with two bedrooms.” The ANC also found that the Project “consists of a mix of unit sizes, some of which should be suitable for small families as well as singles.” (Ex. 28A.) As set forth in the Contested Issues section

of this Order, OP also reviewed and supported the Applicant’s affordable housing proffer, and confirmed the Applicant’s calculations with respect to the amount of IZ being provided over the amount required by the Zoning Regulations.

54. Environmental Benefits (Subtitle X § 305.5(k)). The Project has been designed to integrate a host of sustainable features, including providing a minimum of 640 square feet of solar panels on the top of the building’s penthouse to help generate a portion of the building’s energy consumption. In addition, the Applicant will certify the Project with the USGBC as LEED Gold v.4.
55. In its report, OP indicated that DOEE worked with the Applicant on its solar installation proposal and its LEED commitments and “is in support of the proposal.” (Ex. 22, p. 15.)
56. Commemorative Works or Public Art (Subtitle X § 305.5(d)). Following the effective date of Z.C. Order No. 18-03, the Applicant will engage with ANC 3E to select the subject matter and artist for a mural to be located on the south façade of the Project, with the approximate location and dimensions as shown on Sheet A2.2 of the Architectural Plans. The Applicant will dedicate up to \$25,000 for the design and installation of the mural prior to receiving the first certificate of occupancy for the Project, but the mural need not be installed prior to issuance of the first certificate of occupancy.
57. The OP report correctly notes that the mural is located along a property line and is therefore “at risk.” The ANC understood that the location of the mural was “at risk” but still preferred the mural to be installed in its proposed location. The Applicant will work with the ANC to determine the appropriate artist and subject matter for the mural, and the ANC’s support of the mural indicates that it would be a benefit to the community. (See Ex. 22, p. 14; Ex. 28A, p. 2.)
58. Uses of Special Value to the Neighborhood Subtitle X § 305.5(q).
 - a. Landscaping and Public Space Improvements.
 - i. As shown on Sheets A1.0, L1.0-L1.2 and L1.4-L1.7 of the Architectural Plans, the Project will include a variety of significant public space improvements adjacent to the Site and on the west side of 41st Street, N.W. The public space improvements will include the following:
 - A. Enhanced streetscape design elements along 41st Street directly adjacent to the Project’s entrance, including: (i) a bioretention planting area; (ii) granite pavers between the building façade and the sidewalk; (iii) bar-height seating facing the sidewalk and movable tables and chairs for the café seating; (iv) planters with stone curbs; (v) building exterior light fixtures and in-ground light fixtures; and (vi) bench seating at the residential entry;

- B. An eight-foot-wide concrete public sidewalk that replaces the existing six-foot-wide public sidewalk adjacent to the Site;
- C. A speed table in the location and with the materials as shown on Sheets L1.0 and 1.1 of the Architectural Plans to slow traffic;
- D. A new curb extension/bulb-out on the east side of 41st Street to shorten the pedestrian travel distance across 41st Street and slow vehicular traffic. As shown on Sheets L1.0 and 1.1 of the Architectural Plans, the bulb-out will include new stone pavers, short-term bicycle parking for eight bicycles, a public art feature, streetscape plantings, and signage for the new crosswalk; and
- E. On the west side of 41st Street, a “traffic-calming curb extension” in the location and with the landscaping materials as shown on Sheets L1.0 and L1.1 of the Architectural Plans.

The Applicant will maintain the public space improvements listed in FF No. 58 for the life of the Project;

- ii. The Applicant will spend up to \$5,000 for the installation of landscaping on the northern portion of Reservation 503, which is located between 41st Street to the east and Wisconsin Avenue to the west (“Reservation 503 North”), and will maintain the landscaping in Reservation 503 North for the life of the Project;
- iii. If or when the owner of property located at 4600 Wisconsin Avenue, N.W. (Square 1732, Lot 53) (“4600 Wisconsin Owner”) stops maintaining the landscaped area approved to be developed in Z.C. Order No. 10-23, Decision No. 10 (view “A” in Ex. 19B) on the southern portion of Reservation 503 (“Reservation 503 South”), the Applicant shall maintain Reservation 503 South for the life of the Project; and
- iv. In working with the Applicant on its proposed landscape and public space plans, the ANC noted that they would “[a]dd significant traffic calming and placemaking elements, including extending the pedestrian area in front of the restaurant into the street and improving the space with public art and special paving, transforming triangular road lane markings into a raised, landscaped space, and replacing an ordinary painted crosswalk with a raised, attractively-patterned crosswalk.” (Ex. 28A, pp. 1-2.) OP agreed that the “streetscape improvements would be attractive additions to the pedestrian environment and would help to further activate the area.”; and (Ex. 22, p. 16.)

- b. Donation to Friendship Place. The Applicant will contribute \$35,000 to Friendship Place to make improvements needed as a result of leaking and flooding in their basement, including but not limited to installing new pipes, waterproofing the basement's foundation, installing additional landscaping that would keep water away from the building and its foundation, and replacing the building's front and side doors. The ANC and OP both agreed that this contribution amounted to a public benefit that would help to support a local homeless services provider. (Ex. 28A, p. 2; Ex. 22, p. 16.)

Transportation Demand Management

59. The Applicant committed to the following TDM measures:

- a. Develop and maintain a property management website that will include information on and links to current transportation programs and services such as: (i) Capital Bikeshare, carsharing services, and ride-hailing services; (ii) information about transportation apps, such as Citymapper, Spotcycle, and Transit and other transportation resources, such as DDOT's D.C. Bicycle Map and goDCgo.com; (iii) links to the Commuter Connections Rideshare Program, which provides complimentary information on a variety of commuter programs to assist in determining which commuting options work best for commuters; (iv) information about 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; and (v) information about the Commuter Connections Pools Program, which incentivizes commuters who currently drive alone to carpool;
- b. Provide an electronic display in a common, shared space in the building that provides real-time public transit information such as nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the number of bicycles available at each location;
- c. Provide two Electric Vehicle ("EV") charging stations internal to the building's garage;
- d. Offer two of the on-site vehicle parking spaces to a car-share provider(s), subject to demand. If an agreement with a car-share provider cannot be reached prior to the issuance of the first certificate of occupancy for the Project, then the Applicant will: (i) host a transportation event for residents and employees of the Project within the first year following the issuance of the first certificate of occupancy; and (ii) provide one \$10 pre-loaded SmarTrip card per dwelling unit and employee upon initial lease-up of the building;
- e. Unbundle the cost of parking spaces from the cost of residential leases; and

- f. Restrict residents of the Project from obtaining a Residential Parking Permit (“RPP”) by: (i) placing a clause in emphasized type in all residential leases that prohibits residents from applying for or obtaining RPPs, or using an RPP guest pass within one mile of the Site, upon penalty of mandatory lease termination to the full extent permitted by law; and (ii) obtaining written authorization from each tenant through a required lease provision that allows the Department of Motor Vehicles (“DMV”) to release to the Applicant every 12 months any and all records of that tenant requesting or receiving an RPP for the Site. The Applicant will take all reasonable steps to obtain and review such records for noncompliance with such lease provisions. The Applicant will also: (i) oppose any effort by Project residents or others to add the Site to the list of properties eligible for RPPs; and (ii) if the Applicant sells any unit(s) at the Project, the Applicant will add a covenant that runs with the land to the deed for the unit(s) prohibiting residents from applying for or obtaining RPPs.

Additional Commitments to ANC 3E

60. The Applicant also agreed to the following items as part of its MOU with ANC 3E. These items are not considered public benefits and project amenities under 11-X DCMR Chapter 3. However, the Applicant has committed to the following:
- a. The Applicant will reserve a minimum of 4,971 square feet of gross floor area in the Project solely for use as full-service restaurant (“Restaurant Space”) where food is: (i) delivered to the tables by a server; (ii) paid for after consumption; and (iii) served on non-disposable plates with non-disposable cutlery. Notwithstanding the definition of “Restaurant” in 11-B DCMR § 100.2, the tenant of the Restaurant Space may be permitted to serve alcoholic beverages, provide entertainment including televisions and live and/or amplified music, and allow dancing, but such uses will be subject to any otherwise applicable licensing restrictions, and the ANC will be permitted to render any such advice it deems appropriate on any future applications for new licenses or renewals;
- b. The Applicant will install all kitchen exhaust systems associated with the eating and drinking establishment use so that they vent to the roof of the Project;
- c. The Applicant will prohibit the following uses at the Property: sexually-oriented business establishment; a check-cashing establishment; a pawnbroker; a bank; a nightclub as defined by the D.C. Alcoholic Beverage Regulation Administration (“ABRA”); a mattress store; a convenience store such as 7-Eleven; a professional office; a drug store such as CVS; and any “chain” retail, service, or food service establishment (a “chain” being defined as a business with either at least 10 stores within the District of Columbia or at least 50 stores nationwide). Notwithstanding the foregoing, the ANC may approve a use otherwise prohibited in this paragraph that the ANC believes would provide substantial value for the community. Such approval shall be granted by the ANC only by a formal resolution; and

- d. The Applicant will prepare a loading management plan as part of the building permitting process, to be implemented for the life of the Project.

Compliance with PUD Standards

61. The application complies with the standards for a PUD set forth in 11-X DCMR, Chapter 3 of the Zoning Regulations.
62. The Project offers a high level of public benefits and project amenities. When compared with the amount of development flexibility requested and project impacts, the application satisfies the balancing test required in 11-X DCMR § 304.3, as is further discussed below.
63. The Site is approximately 6,855 square feet in land area, or 0.15 acres. The Zoning Regulations require a minimum land area of 15,000 square feet for a PUD in the MU-5B zone, but the Commission may waive this requirement to no less than 5,000 square feet upon finding that the development is of exceptional merit and is in the best interests of the District of Columbia or the country and achieves one of the standards set forth in 11-X DCMR § 301.3(a)-(c). (*See* 11-X DCMR §§ 303.1 and 301.3.) As described in FF No. 45 and 46 and Decision A3, the Commission grants flexibility from the PUD land area requirements of 11-X DCMR § 303.1 because the Project achieves the applicable standards set forth in 11-X DCMR § 301.3.
64. The development is of exceptional merit and is in the best interest of the city. The Project will significantly improve the existing area by virtue of its architectural design, proposed ground floor and penthouse commercial uses that will benefit the neighborhood and increase economic development in the area, and improvements to the surrounding public space.
65. The PUD and related Zoning Map amendment are not inconsistent with the Comprehensive Plan as is set forth in FF Nos. 68-79.
66. The Project has been evaluated under the PUD guidelines for the MU-5B zone. The Project is within the height and density permitted for a PUD within the MU-5B zone.
67. Neither the Commission nor OP identified any unacceptable Project impacts on the surrounding area, and instead found that the Project impacts would be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the Project. OP recommended four conditions to approval, to which the Applicant responded with revised language. As described in FF Nos. 85-87, the Commission concluded that OP's conditions were appropriate and would mitigate any adverse impacts associated with use of the penthouse. DDOT also recommended conditions to approval. At the public hearing, the Applicant agreed to each of DDOT's conditions to mitigate any unfavorable impacts resulting from the Project. The Commission has incorporated the OP

conditions, and DDOT conditions into this Order. Therefore, the Commission finds that the Project will not create any unacceptable impacts on the surrounding area.

Compliance with Guiding Principles of the Comprehensive Plan

68. The Commission finds that the Project is not inconsistent with the Comprehensive Plan for the National Capital, including the Future Land Use Map and the Generalized Policy Map. The Commission also finds that the Project complies with the guiding principles in the Comprehensive Plan and furthers a number of the major Citywide and Area Elements of the Comprehensive Plan.
69. The purposes of the Comprehensive Plan are six-fold: (a) to define the requirements and aspirations of District residents and, accordingly, influence social, economic and physical development; (b) to guide executive and legislative decisions on matters affecting the District and its citizens; (c) to promote economic growth and jobs for District residents; (c) to guide private and public development in order to achieve District and community goals; (e) to maintain and enhance the natural and architectural assets of the District; and (f) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District. (D.C. Code §1-245(b)).
70. The Project advances these purposes by promoting the social, physical, and economic development of the District through the provision of a high-quality residential development with a ground floor restaurant/bar on the Site, without generating any adverse impacts. The Project will improve the neighborhood and promote economic growth.
71. Future Land Use Map: According to the Comprehensive Plan Future Land Use Map, the Site is designated mixed use Medium-Density Residential and Moderate-Density Commercial. The Medium-Density Residential designation is used to define neighborhoods or areas where mid-rise (four to seven stories) apartment buildings are the predominant use. Pockets of low- and moderate-density housing may exist within these areas. The Medium-Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone Districts (the RA-2 and RA-3 zones under the 2016 Zoning Regulations) are generally consistent with the Medium-Density designation, although other zones may apply. (10A DCMR § 225.5.)
72. The Moderate-Density Commercial designation is used to define shopping and service areas that are somewhat more intense in scale and character than the low-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in low- density commercial areas but generally do not exceed five stories in height. The corresponding zone districts are generally C-2-A, C-2-B, and C-3-A (the MU-4, MU-5, and MU-7 zones under the 2016 Zoning Regulations), although other districts may apply. (10A DCMR § 225.9.)

73. As the Commission has previously acknowledged, the Framework Element of the Comprehensive Plan provides that the Land Use Map is not a zoning map. (*See* 10A DCMR § 226.1(a); *see also* Z.C. Order No. 11-13; Z.C. Order No. 10-28.) Whereas zoning maps are parcel-specific and establish detailed requirements for setback, height, use, parking, and other attributes, the Future Land Use Map does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. (*Id.*) By definition, the Map is to be interpreted broadly. (*Id.*) Furthermore, the land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. The granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here. (*Id.* at § 226.1(c).) The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans. (*Id.* at § 226.1(d).) Thus, in evaluating the proposed map amendment, the Site should be viewed in context and not as an isolated parcel.
74. Based on the text of the Comprehensive Plan and the foregoing guidance, and when considering the Site’s surrounding context including the zone districts, uses, and approved PUDs in the area, the Commission finds that the Applicant’s proposal to rezone the Site from the MU-4 zone to the MU-5B zone to construct a mixed-use building with new housing, affordable housing, and a neighborhood-serving restaurant/bar use is consistent with the Comprehensive Plan’s Future Land Use Map designation of the Site. The proposal to construct the building to a height of 79 feet, four inches, and 5.04 FAR is also consistent with this designation. The Commission credits OP’s analysis on this matter and its conclusion that the Project is not inconsistent with the Future Land Use Map designations. OP’s setdown report stated that the “proposed seven-story, 79’-4” mixed use building has a 5.04 FAR, 0.36 of which is commercial FAR, and is not inconsistent with what is considered medium density residential and well within the limits of what is considered moderate density commercial development.” (Ex. 10, p. 5; Ex. 22, p. 6.) OP also stated that “the Applicant has requested permission to construct a building at a higher height and density than is permitted as matter-of-right under MU-4 zoning. As the future land use map designates this area for medium density residential and moderate density commercial land use the proposal having MU-5-B level of development would be appropriate.” (Ex. 10, p. 13.) OP concluded that the “proposal would be consistent with the intent of the MU-5 (MU-5B) zone and not inconsistent with the medium density residential and moderate density commercial land use designation of the striped Future Land Use.” (*Id.* at 14.) Moreover, the MU-5 zone is specifically identified as a corresponding zone district in the Moderate Density Commercial land use category. Therefore, the Commission finds that the Project is not inconsistent with the Future Land Use Map designations for the Site.
75. Generalized Policy Map: The District of Columbia Comprehensive Plan Generalized Policy Map designates the Site as a Main Street Mixed-Use Corridor. Main Street Mixed-Use Corridors are traditional commercial business corridors with a concentration

of older storefronts along the street. The service area for Main Streets can vary from one neighborhood (e.g., 14th Street Heights or Barracks Row) to multiple neighborhoods (e.g., Dupont Circle, H Street, or Adams Morgan). Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper-story residential or office uses. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment. (10A DCMR § 223.14.)

76. The Commission finds that the proposed rezoning and PUD redevelopment of the Site is consistent with the policies indicated for Main Street Mixed-Use Corridors because the Project will improve the traditional commercial corridor by providing a pedestrian-oriented streetscape with a traditional retail storefront with residential units in the upper stories. This redevelopment of the underutilized Site will foster economic development and create new housing opportunities within a dense urban neighborhood. The Site is also located in a transit-oriented location, such that redevelopment will support transit use. The Commission also agrees with OP's determination that redevelopment of the Site is consistent with the Main Street Mixed-Use Corridor designation, which is intended to encourage conservation and enhancement of traditional commercial areas. (*See* OP setdown report (Ex. 10, p. 5).) In reference to the Main Street Mixed-Use Corridor designation, OP stated that the "proposed development of the site is not inconsistent with that designation." (*Id.* and Ex. 22, p. 5.) The Project will enhance the pedestrian and transit-oriented environment by widening the sidewalk, adding bicycle and carshare spaces near the metro station, and by improving the streetscape. (Ex. 10, p. 6.) Thus, the Commission finds that the Project is not inconsistent with the Site's designation on the Generalized Policy Map.
77. Compliance with Guiding Principles of the Comprehensive Plan: Based on the entire case record, including the Applicant's statement in support, Comprehensive Plan analysis, and the OP reports, the Commission finds the Project to be not inconsistent with the guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as follows: (Ex. 2, 2F, 10, 22.)
- a. Managing Growth and Change: In order to manage growth and change in the District, the Comprehensive Plan encourages, among other goals, the growth of both residential and non-residential uses. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods. In this case, the Commission finds that the Project is not inconsistent with each of these goals. Redeveloping the Site as a vibrant mixed-use building with residential and restaurant/bar uses will further the revitalization of the surrounding neighborhood. The proposed restaurant/bar use will create new jobs for District residents, further increase the city's tax base, and help to reinvigorate the existing neighborhood fabric. The Applicant worked closely with ANC 3E to identify and commit to uses at the Site

that would be valued and prioritized by the community. Therefore, the Commission finds that the proposed residential and non-residential uses at this infill, transit-oriented location will be successful in managing growth and change in the area;

- b. Creating Successful Neighborhoods: One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development from development of the Comprehensive Plan to implementation of the plan's elements. The Commission finds that the Project furthers this goal since, as part of the PUD process, the Applicant worked extensively with ANC 3E to ensure that the Project provides a positive impact on the immediate neighborhood and includes an extensive public benefits and amenities package that is specific to the needs of the local community. A signed MOU between the Applicant and the ANC was submitted to the record with the ANC's resolution describing the ANC's unanimous vote in support of the application; and (Ex. 28, 28A.)
 - c. Building Green and Healthy Communities: A major objective for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. Based on its review of the record, the Commission finds that the Project includes a substantial number of sustainable design features, including rooftop solar panels and a commitment from the Applicant to certify the Project as LEED Gold v.4.
78. Compliance with the Citywide and Area Elements of the Comprehensive Plan. The Commission finds that the Project is not inconsistent with the objectives and policies contained within the Citywide and Area Elements of the Comprehensive Plan, as applicable. The Commission bases this conclusion on its review of the Applicant's statement in support and comprehensive plan analysis and the reports submitted by OP. (Ex. 2, 2F, 10, 22.) Specifically, the Commission concurs with OP's finding that the Project would "further policy statements contained in the Land use, Transportation, Housing, Environmental Protection, and Urban Design Citywide Elements, and the Rock Creek West Area Element" and agrees with OP's detailed analysis regarding the Project's compliance with each of these elements as set forth in the OP hearing report. (Ex. 22, p. 5; Ex. 10, pp. 6-12.)
79. Based on the foregoing, and consistent with the Commission's thorough review of the entire case record, the Commission concludes that the Project is not inconsistent with the Comprehensive Plan, including the Future Land Use Map and the Generalized Policy Map; complies with the guiding principles in the Comprehensive Plan; and furthers a number of the major Citywide and Area Elements of the Comprehensive Plan.

Office of Planning Reports and Testimony

80. On June 1, 2018, OP submitted a report recommending setdown of the application. (Ex. 10.) The OP setdown report provided an analysis demonstrating that the Project is not inconsistent with the Future Land Use and Generalized Policy Maps of the Comprehensive Plan, and that the Project advances the Land Use, Transportation, Housing, Environmental Protection, and Urban Design Area Elements and the Rock Creek West Area Element of the Comprehensive Plan. (Ex. 10, pp. 4-12.) The OP report stated that the Site would be easily accessible on foot, bicycle, or vehicle, and that the building's design would blend in with the surrounding architecture along 41st Street, N.W. and Wisconsin Avenue, N.W. (Ex. 10, p. 3.) OP also found that the building's expansive storefront windows and glass door would contribute to the streetscape environment, and that the penthouse's floor to ceiling glazing along much of the south and west walls would to provide panoramic views of the city from the inside. (*Id.*)
81. The OP setdown report also requested that the Applicant submit additional materials clarifying the final IZ proffer and the public benefits package, and to provide samples of the building materials. The Applicant provided the requested information in its prehearing submission, supplemental prehearing submission, and at the public hearing. (Ex. 13, 19.)
82. On September 17, 2018, OP submitted a hearing report. (Ex. 22.) The OP hearing report stated that OP "continues to determine that, on balance, the proposal is not inconsistent with the Comprehensive Plan as a whole, including the maps and the policy statements." (Ex. 22, p. 5.) The OP hearing report also reiterated its support for and recommended approval of the Project subject to the following conditions:
- a. Hours of operation and use of roof must be limited to no later than midnight;
 - b. No live or amplified music is permitted on the roof;
 - c. All lighting must be shielded so it is contained to the roof area and turned off by 1:00 a.m. except for any code-required emergency lights; and
 - d. The ground-floor restaurant space and rooftop restaurant/lounge should not be considered a proffered benefit.
83. At the public hearing, the Applicant responded to OP's requested conditions and submitted the following revised conditions: (Ex. 35).
- a. The hours of operation and use of the rooftop restaurant/bar shall be limited to those hours authorized by any license(s) issued by ABRA;
 - b. Amplified live music shall not be permitted after midnight outside on the roof. Instrumental or recorded music conveyed via speakers, or other sound system,

shall be permitted and shall comply at all times with the requirements of the D.C. Noise Control Act; and

- c. All lighting will be shielded so it is contained to the roof area and complies with all applicable D.C. Building Code requirements.
84. The Applicant also agreed that the ground-floor restaurant/bar use need not be considered a public benefit as part of the PUD.
 85. The Commission considered both sets of conditions and finds that the OP's proposed conditions are appropriate. The Commission felt that the roof top restaurant/bar could cause adverse effects on nearby residences, namely noise and light pollution, and that these effects would be particularly acute late at night. It found that the less stringent conditions proposed by the Applicant were not sufficient to adequately mitigate them and that the conditions proposed by OP are sufficient. Accordingly, the Commission adopts OP's proposed conditions as part of this Order in Decision No. E.1.
 86. OP also indicated that the Project's ground-floor and rooftop restaurant/bar use should not be considered a proffered benefit. The Applicant agreed to that condition at the public hearing and the Commission therefore has not included the restaurant/bar use as a proffer in this Order. However, the Commission notes that ANC 3E viewed the restaurant/bar as an amenity to the PUD and the Applicant agreed to conditions related to providing a minimum amount of space in the building dedicated to restaurant/bar uses and restricting the types of uses and tenants that can occupy the restaurant/bar space. (*See* ANC Resolution where the ANC states that the sit-down restaurant use is something that "residents keenly desire" and that "rooftop restaurants/bars are popular, and there are currently none in the immediate area.") (Ex. 28A, p. 2.)
 87. Based on the foregoing, as well as the Commission's review of the OP reports in the record, the Applicant's submissions in response thereto, and testimony presented at the public hearing, the Commission finds that the Applicant has fully addressed OP's concerns and has imposed conditions that will fully mitigate any potential impacts caused by the penthouse use such that the Commission can move forward in approving this case with the conditions included herein.

DDOT Report and Testimony

88. On September 17, 2018, DDOT submitted a hearing report. (Ex. 21.) The DDOT report indicated no objection to the application subject to the Applicant agreeing to do the following:
 - a. Design, fund, and install the proposed curb bulb-outs to facilitate safer pedestrian crossings;
 - b. Fund and install two electric vehicle charging stations;

- c. Implement a loading management plan that restricts all trucks greater than 30 feet in length from serving the Site; and
 - d. Implement the TDM plan proposed in the Applicant’s August 13, 2018 transportation report, with the one modification: if an agreement is not reached with a carshare company to provide service in the two reserved carshare spaces prior to the Project’s first Certificate of Occupancy, then the Applicant shall offer a \$10 SmarTrip card to each dwelling unit.
89. At the public hearing, the Applicant agreed to all of DDOT’s conditions and also agreed that they should be included as conditions in this Order. Therefore, the Commission finds that the Applicant fully addressed the comments raised in DDOT’s report and that accordingly the Project will not create any adverse impacts on the transportation network that will not be adequately mitigated. The Commission incorporates DDOT’s conditions in Decision Nos. B6d., C1c., C1d., and D4. of this Order.

Interagency Review

90. Pursuant to 11-X DCMR § 304.4, the Commission shall find that the Project does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the Project.
91. In this case, and as set forth in the OP setdown report, OP referred the application to the Department of Energy and the Environment (“DOEE”), the Department of Housing and Community Development (“DHCD”), DDOT, the Department of Parks and Recreation (“DPR”), DC Public Schools (“DCPS”), the Department of Public Works (“DPW”), the Department of Aging (“DOA”), the Department of Employment Services (“DOES”), Fire and Emergency Management Services (“FEMS”), the Metropolitan Police Department (“MPD”), DC Water, and the Washington Metropolitan Area Transit Authority (“WMATA”). (Ex. 10, p. 18.) However, none of these agencies other than OP and DDOT submitted any documentation to the record or testified at the public hearing raising concerns or objections to the Project. However, based on the materials in the record and testimony presented at the public hearing, the Commission finds that the Applicant worked closely with OP and DDOT on this application and fully addressed their comments on potential Project impacts. Moreover, given that notice of the Project was provided to 11 other agencies well in advance of the public hearing, the Commission concludes that the lack of comments submitted from those agencies suggests that those agencies found that the Project would not result in unacceptable impacts on the surrounding area or on the operation of services and facilities within their purview.
92. Therefore, the Commission concludes that the Project will not have any negative impacts on the surrounding area and will not have an unacceptable impact on the operation of city services and facilities.

Advisory Neighborhood Commission

93. On October 22, 2018, ANC 3E submitted a resolution that was passed by a unanimous vote of 5-0-0. (Ex. 28A.) In its resolution the ANC stated that “the height and density sought for the Project are appropriate if the Applicant provides amenities and mitigation of harms commensurate with the Project’s scope. We believe the Applicant has met that burden.” (Ex. 28A, p. 1.) The ANC resolution also stated that the “new residences and attractive retail space the Project will afford will enhance the vibrance of the neighborhood” and that the “Project consists of a mix of unit sizes, some of which should be suitable for small families as well as singles.” (*Id.*) The ANC noted that the “primary potential harms associated with development of this scope are traffic increases and parking shortages. Here, the Applicant’s traffic study reasonably predicts the Project will generate few additional car trips during peak periods. (*Id.*) Based on its overall review of the Project and the public benefits and amenities package proposed, ANC 3E also found that the “combination of amenities and mitigation proffered by the Applicant are exemplary, and justify the relief sought given the Project’s location in a Medium Density zone and the relatively small number of residential units created by the Project.” (Ex. 28A, p. 2.)
94. On October 22, 2018, the ANC also submitted a signed MOU setting forth the Applicant’s commitments and requested that the Commission “incorporate each and every provision in the MOU in any order issued in connection with the above-referenced application.” (Ex. 28A, p. 2.)
95. At the public hearing, the Applicant testified that it agreed to each of the conditions in the signed MOU. Therefore, as set forth in the Decision section of this Order, the Commission hereby incorporates the conditions of the MOU into this Order.

Contested Issues**Affordable Housing and Compliance with the PUD Requirements of 11-X DCMR § 305.5(f)**

96. Ms. Simon provided written and oral testimony that the Applicant’s affordable housing proffer incorrectly calculated the matter-of-right IZ set-aside requirements and therefore the Applicant should be required to increase its affordable housing proffer for it to be considered a PUD public benefit. (Ex. 30.)
97. Pursuant to 11-X DCMR § 305.5(f), public benefits of a proposed PUD may be exhibited and documented in a variety of categories, including “[h]ousing that [e]xceeds the amount that would have been required through matter-of-right development under existing zoning.”
98. According to Ms. Simon’s testimony, the Zoning Regulations do not define an IZ set-aside requirement when more than half of proposed residential units are not within steel and concrete construction and the Project is in a zone with a matter-of-right height of more than 50 feet. (*See* 11-X DCMR § 1003.1 and 1003.2.) Ms. Simon claimed that under the Site’s proposed MU-5B zone the Project would be subject to the IZ set-aside

requirement of 11-X DCMR § 1003.1 (10% of the residential square footage or 75% of the achievable bonus density). However, Ms. Simon alleged that “the Applicant chose to assume that, although they are not employing the more costly construction methods, the Project should qualify for the reduced IZ set-aside requirement based solely on their request for a map amendment.” (Ex. 30, pp. 2-3.) Ms. Simon stated that the “affordable housing Project in this case meets the IZ requirement, but it exceeds the IZ requirement by only 108 [square feet]...” (*Id.* at 3.)

99. At the public hearing, the Applicant responded to Ms. Simon’s testimony and also submitted a written response. (Ex. 34.) In its written response, the Applicant provided calculations showing the proposed IZ proffer (3,882 square feet) compared to: (a) the matter-of-right IZ requirement under the existing MU-4 zone (2,746.03 square feet); and (b) the PUD IZ requirement under the proposed MU-5B zone (2,539.57 square feet). Based on these calculations, the Applicant concluded that the Project would provide 1,136 square feet dedicated to IZ units more than would be required under the minimum requirements, such that all 1,136 square feet should be considered a public benefit of the approved PUD according to 11-X DCMR § 305.5(f). However, even if the Commission assumed Ms. Simon’s testimony and calculations to be correct, the Project is providing more square footage devoted to IZ units than would be required by the current regulations since the Applicant is providing 3,882 square feet dedicated to IZ units. Indeed, Ms. Simon did not dispute that the Applicant is providing more IZ than required. (*See* Ex. 30, p. 3 and October 29, 2018 Public Hearing Transcript [“Tr.”] p. 34.) At the public hearing, OP also stated that “the application does comply with the zoning regulations and it does exceed the zoning regulations” and also explained that it reviewed the Applicant’s IZ calculations with its housing specialist at DHCD who “agreed with the numbers from the Applicant.” (*See* Tr., p. 41.)
100. As requested by the Commission at the public hearing, OP submitted a supplemental report responding to the Applicant’s affordable housing proffer, Ms. Simon’s testimony, and the amount of “excess” affordable housing the Applicant was providing that could be counted as a PUD benefit consistent with 11-X DCMR § 305.5(f). (Ex. 38.) In its report, OP confirmed that “the [A]pplicant’s use of the IZ set aside percentages is correct and consistent with intent and practice.” (Ex. 38, p. 1.) OP referenced 11-X DCMR § 305.2, which provides that the PUD public benefits must be greater than would likely result from development of the site as a matter of right. Under the matter-of-right scenario, OP concluded that the Project would be required to set aside 2,746.03 square feet for IZ units, but that the Project proposes to set aside 3,882 square feet for IZ units, which is 1,136 square feet more than would have be required. Thus, OP concluded that “[t]he 1,136 sq. ft. is the public benefit.” (Ex. 38, p. 1.) OP also indicated that the set aside section in the Zoning Regulations was being clarified in Z.C. Case No. 04-33I to reflect the original intent and practice of the current IZ regulations.
101. On November 9, 2018, Ms. Simon submitted a response to the Applicant’s affordable housing proffer and OP’s supplemental report, which stated that: (a) the Applicant and OP were using the proposed IZ regulations from Z.C. Case No. 04-33I rather than the

current IZ regulations to calculate the IZ requirements for the Project; and (b) the Applicant should use the current IZ regulations for the proposed MU-5B zone, which do not permit the Applicant to take advantage of the “reduced” IZ requirement of eight percent GFA or 50% of the bonus density because the Project does not use steel and concrete to frame more than 50% of the dwelling units.

102. On November 14, 2018, the Applicant submitted a response to OP and Ms. Simon’s IZ submissions, confirming its calculations and concluding again that 1,136 square feet of IZ was being provided in the Project over the amount of IZ required under the matter-of-right requirements. (Ex. 34.) The Applicant’s response also noted that the Project included 2,890 square feet dedicated to IZ units at 60% of the MFI (two two-bedroom units at 1,445 square feet each) and 992 square feet dedicated to an IZ unit at 50% of the MFI (one one-bedroom unit) as compared to 140.32 square feet of IZ required to be provided at 50% of the MFI. This affordable housing contribution is one of many other public benefits and project amenities proffered as part of this application, which include a contribution to a local community organization selected by the ANC, the installation of significant public space and traffic calming improvements and maintenance of landscaping in the area, contracting with a local artist to install a mural on the building, installing solar panels on the roof, and certifying the building as LEED Gold v.4, among others. The benefits and amenities package, including the proposed amount of IZ square footages, number of units, size, and subsidy levels, was fully vetted, prepared in consultation with, and supported by the ANC.
103. In addition to the specific issues on affordable housing raised by Ms. Simon, DC4RD also submitted testimony alleging that the amount of affordable housing in the Project could not be deemed a “substantial benefit” and that the lack of family-sized units (three or more bedrooms) was “unacceptable at a time of an affordability crises for families.” (Ex. 33.) Based on these assertions, DC4RD requested that 30% of the residential density in the Project be dedicated to family-sized affordable housing. DC4RD also asserted that the Project was inconsistent with a number of Comprehensive Plan policies related to affordable housing.
104. Based on the testimony provided and the written materials filed in the case record, the Commission finds that the amount of affordable housing in the Project is a substantial benefit over the amount of IZ that would be required in the Project as a matter of right. The Commission reviewed Ms. Simon’s written and oral testimony regarding the appropriate way to calculate the matter-of-right IZ requirements for the Project, and also reviewed OP’s and the Applicant’s responses thereto. Based on its review, the Commission agrees with OP and the Applicant that the Project is providing 1,136 square feet of IZ units more than would be required for the Project as a matter of right. The Applicant correctly applied the current IZ regulations as they have consistently been interpreted and applied in other cases, and agrees with OP that ZC Case No. 04-33I is simply being clarified to reflect the original intent and practices of the current IZ requirements. (OP Report, p. 1.) Therefore, the Commission agrees that the matter-of-right IZ requirement for the Project would be 1,136 square feet, acknowledges that the

Applicant is providing 3,882 square feet, and concludes that the IZ proffer consistent with 11-X DCMR § 305.5(f) is 1,136 square feet.

105. In addition, the Project also provides 992 square feet of gross floor area dedicated to an IZ unit at 50% of the MFI whereas only 140.3 square feet of IZ at 50% of the MFI would be required based on the size of the penthouse habitable space. (See 11-C DCMR § 1003.2.) The Project provides two large two-bedroom IZ units at 60% of the MFI whereas no two-bedroom market rate units are provided in the Project, such that family-sized housing is specifically being dedicated to the IZ units. Therefore, based on its review of the documents submitted to the record, including Ms. Simon’s filings, DC4RD’s filing, the Applicant’s filings, and OP’s filings (including OP’s reference to Z.C. Case No. 04-33I which will clarify the IZ set aside requirements) and also based on the testimony presented at the public hearing, the Commission concludes that: (a) the Applicant is providing significantly more square feet dedicated to IZ units than would be required as a matter of right, all of which should be considered a public benefit in accordance with 11-X DCMR § 305.5(f); (b) the Applicant is providing significantly more square footage devoted to IZ units at 50% of the MFI than would be required under the Zoning Regulations; (c) the Applicant is specifically dedicating the largest units in the Project to IZ units to accommodate families; and (d) a requirement to provide 30% of a residential building to IZ units generally applies to dispositions of District-owned land (*see* D.C. Official Code § 10-801(b-3)(1)(A)) and in this case the Site is not being sold or developed by the District. Therefore, the Commission finds that the Applicant’s affordable housing proffer is consistent with the text of Zoning Regulations, amounts to a significant public benefit, and when taken together with the entirety of the Applicant’s public benefits and amenities package, finds that the PUD benefits and amenities are reasonable tradeoffs for the requested development flexibility. The Commission further finds that the Project is not inconsistent with the Comprehensive Plan policies cited by DC4RD.

Residential Parking Permit Restrictions

106. Ms. Simon’s written and oral testimony stated that any Order approving the application should include a strong and enforceable condition restricting residents of the Project from obtaining an RPP(s).
107. At the public hearing, the Applicant testified that although the Project fully complied with the off-street parking requirements of the Zoning Regulations and although no parking relief was needed or requested, the Applicant was still committed to restricting residents of the Project from obtaining RPPs. The conditions agreed to with respect to RPP restrictions were established between the Applicant and the ANC and are set forth in the MOU. (Ex. 28; Decision No.C1f. herein.) Moreover, the ANC stated that the “primary potential harms associated with development of this scope are traffic increases and parking shortages. Here, the Applicant’s traffic study reasonably predicts the Project will generate few additional car trips during peak periods.” (Ex. 28A, p. 1.) DDOT agreed that the Project “likely will not generate this many peak hour vehicle trips due to

the low parking ratio.” (Ex. 21, p. 2.) In addition, DDOT found that the “proposed parking ratio is very low and is consistent with DDOT’s approach to encouraging non-automotive travel, discouraging automobile ownership, and minimizing traffic congestion in the District.” (Ex. 21, p. 2.) Therefore, because the amount of on-site parking and the RPP restrictions have been thoroughly reviewed and supported by both the ANC and DDOT, and because the Commission finds that the restrictions are both enforceable and consistent with other orders issued by the Commission (Z.C. Order Nos. 16-26, 14-14, 16-10, and 10-23), the Commission adopts the Applicant’s proposed RPP language as part of this Order.

Impacts on Public Services

108. DC4RD alleged that the Project’s cumulative impacts would have a substantial burden on public services, which had not been sufficiently evaluated as part of the PUD process. (Ex. 33.)
109. The Commission finds that the Project had been referred to 13 District agencies for review, including OP and DDOT, as well as DOEE, DHCD, DPR, DCPS, DPW, DOA, DOES, FEMS, MPD, DC Water, and WMATA. (See Ex. 10, p. 18.) OP and DDOT submitted reports on the application and testified at the public hearing that the Project would not create any adverse impacts that could not be adequately mitigated, and the Commission has imposed conditions herein to ensure that any potential impacts will be mitigated. Although other District agencies did not submit reports to the record on this case, the Commission concludes that notice was properly given to those agencies and they did not provide any written or oral testimony addressing concerns with the Project. The Commission therefore finds that the Applicant complied with the applicable Zoning Regulations and the Project is not inconsistent with the Comprehensive Plan policy cited by DC4RD.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; and (c) protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan. (11-X DCMR § 300.1.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. Development of the property included in this application carries out the purposes of 11-X DCMR, Chapter 3 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mix of uses for the Project is appropriate for the Site. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Project should be approved.
5. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
6. The Applicant's requests for flexibility are not inconsistent with the Comprehensive Plan. Moreover, the PUD benefits and amenities are reasonable tradeoffs for the requested development flexibility.
7. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The Commission is required under § 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 carefully considered the OP reports in this case and, as explained in this Order, finds its recommendation to grant the application subject to conditions persuasive.
9. 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. ANC 3E voted unanimously to support the application based on the signed MOU between the ANC and the Applicant, and asked that the Commission to incorporate the terms of the MOU in this Order. The Commission supports the benefits and mitigation measures included in the MOU and agrees with the ANC's vote in support of the application, and has included the terms of the MOU as conditions of this Order. Therefore, the Commission has given great weight to the ANC.
10. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 et seq. (2007 Repl.)).

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission **ORDERS APPROVAL** of the application for a consolidated PUD and related Zoning Map amendment to rezone the Site from the MU-4 zone to the MU-5B zone. This approval is subject to the following guidelines, conditions, and standards. Whenever compliance is required prior to, on or during a certain time, the timing of the obligation is noted in bold and underlined text.

A. PROJECT DEVELOPMENT

1. The Project shall be developed substantially in accordance with the Architectural Plans and Elevations prepared by Bonstra Haresign Architects, dated November 16, 2018, and included in the record at Exhibits 41A1-41A3 (the “Plans”), as modified by the guidelines, conditions, and standards herein
2. The Applicant is permitted to establish a bar/restaurant use in the penthouse of the building pursuant to 11-C DCMR § 1500.3 for the reasons set forth in FF Nos. 43-44.
3. The Applicant is granted flexibility from the minimum PUD land area requirements of 11-X DCMR § 301.1 for the reasons set forth in FF Nos. 45-46.
4. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - b. To vary the final selection of the colors of the exterior materials, based on availability at the time of construction, provided such colors are within the color ranges proposed in the Plans; and to make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
 - c. To provide a range in the number of residential dwelling units of plus or minus 10% from the number depicted on the approved Plans;
 - d. To make refinements to the parking configuration, including layout, number of parking spaces, and other elements, so long as the number of parking spaces provided is at least the minimum number of spaces required by the Zoning Regulations;

- e. To vary the location, attributes, and general design of the streetscape incorporated in the Project to comply with the requirements of and the approval by the DDOT Public Space Division;
- f. To vary the font, message, logo, location, and color of the proposed signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the approved Plans and compliant with the DC signage regulations; and
- g. To vary the sustainable features of the Project, provided the total number of LEED points achievable for the Project does not decrease below LEED Gold v.4.

B. PUBLIC BENEFITS

1. **For the life of the Project**, the Applicant shall provide the following housing and affordable housing set forth in the following chart:

Residential Unit Type	Square Feet & Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	28,762 sf GFA resid. + 1,754 sf penthouse habitable space = 30,516 sf total (100%)	41	N/A	N/A	N/A
Market Rate	26,634 sf GFA (87.3%)	38	Market Rate	N/A	Rental
IZ at 60% MFI	2,890 sf GFA (9.5%)	2	Up to 60% MFI	Life of the Project	Rental
IZ at 50% MFI	992 sf GFA (3.2%)	1	Up to 50% MFI	Life of the Project	Rental
Total IZ	3,882 sf GFA (12.7%)	3	50% and 60% MFI	Life of the Project	Rental

2. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this condition.
3. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has installed a minimum of 640 square feet of solar panels on the top of the building’s penthouses as shown on Sheet A1.8 of the Plans. (Ex. 41A1.)

4. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has registered the Project with the USGBC to commence the LEED-certification process by furnishing a copy of its LEED-certification application to the Zoning Administrator. The application shall indicate that the Project has been designed to include at least the minimum number of points necessary to achieve Gold certification under the USGBC's LEED v.4 standards.
5. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has paid up to \$25,000 and entered into a contract with the artist or a third party for the design and installation of a mural on the south façade of the Project, with the approximate location and dimensions as shown on Sheet A2.2 of the Plans. The mural does not need to be installed prior to issuance of the first certificate of occupancy for the Project. (Ex. 41A2.)
6. **Prior to the issuance of the first certificate of occupancy for the Project**, and subject to DDOT approval, the Applicant shall demonstrate to the Zoning Administrator that it has made the following public space improvements, as shown on Sheets A1.0, L1.0-L1.2 and L1.4-L1.6 of the Plans: (Ex. 41A2-41A3.)
 - a. Installed the following enhanced streetscape design elements along 41st Street directly adjacent to the Project's entrance: (i) a bioretention planting area; (ii) granite pavers between the building façade and the sidewalk; (iii) bar-height seating facing the sidewalk and movable tables and chairs for the café seating; (iv) planters with stone curbs; (v) building exterior light fixtures and in-ground light fixtures; and (vi) bench seating at the residential entry;
 - b. Widened from six feet to eight feet the existing public sidewalk adjacent to the Site and installed new concrete pavers;
 - c. Installed a speed table in the location and with the materials as shown on Sheets L1.0 and 1.1 of the Plans to slow traffic;
 - d. Installed a new curb extension/bulb-out on the east side of 41st Street to shorten the pedestrian travel distance across 41st Street and slow vehicular traffic. As shown on Sheets L1.0 and 1.1 of the Plans, the bulb-out shall include new stone pavers, short-term bicycle parking for eight bicycles, a public art feature, streetscape plantings, and signage for the new crosswalk; and
 - e. On the west side of 41st Street, installed a "traffic-calming curb extension" in the location and with the landscaping materials as shown on Sheets L1.0 and L1.1 of the Plans.

The Applicant shall maintain the public space improvements listed in Decision No. B6 **for the life of the Project.**

7. **Prior to the issuance of the first certificate of occupancy for the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has spent up to \$5,000 and installed landscaping in Reservation 503 North. The Applicant shall maintain landscaping in Reservation 503 North **for the life of the Project.**
8. If or when the 4600 Wisconsin Owner stops maintaining the landscaped area on Reservation 503 South, the Applicant shall maintain the Reservation 503 South landscaping **for the life of the Project.**
9. **Prior to the issuance of the first certificate of occupancy for the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has contributed \$35,000 to Friendship Place to make improvements needed as a result of leaking and flooding in their basement, including but not limited to, installing new pipes, waterproofing the basement's foundation, installing additional landscaping that would keep water away from the building and its foundation, and replacing the building's front and side doors, and provide a letter from Friendship Place indicating that the work has been or is being performed.

C. **TRANSPORTATION DEMAND MANAGEMENT MEASURES**

1. **For the life of the Project,** the Applicant shall implement the following TDM measures:
 - a. Develop and maintain a property management website that will include information on and links to current transportation programs and services such as: (i) Capital Bikeshare, carsharing services, and ride-hailing services; (ii) information about transportation apps, such as Citymapper, Spotcycle, and Transit and other transportation resources, such as DDOT's DC Bicycle Map and goDCgo.com; (iii) links to the Commuter Connections Rideshare Program, which provides complimentary information on a variety of commuter programs to assist in determining which commuting options work best for commuters; (iv) information about 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; and (v) information about the Commuter Connections Pools Program, which incentivizes commuters who currently drive alone to carpool;
 - b. Provide an electronic display in a common, shared space in the building that provides real-time public transit information such as nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the number of bicycles available at each location;

- c. Provide two EV charging stations internal to the building’s garage;
- d. Offer two of the on-site vehicle parking spaces to a car-share provider(s), subject to demand. If an agreement with a car-share provider cannot be reached **prior to the issuance of the first certificate of occupancy for the Project**, then the Applicant shall (i) host a transportation event for residents and employees of the Project within the first year following the issuance of the first certificate of occupancy; and (ii) provide one \$10 pre-loaded SmarTrip card per dwelling unit and employee at initial occupancy of the Project;
- e. Unbundle the cost of parking spaces from the cost of residential leases; and
- f. Restrict residents of the Project from obtaining an RPP by: (i) placing a clause in emphasized type in all residential leases that prohibits residents from applying for or obtaining RPPs, or using an RPP guest pass within one mile of the Site, upon penalty of mandatory lease termination to the full extent permitted by law; and (ii) obtaining written authorization from each tenant through a required lease provision that allows the DMV to release to the Applicant every 12 months any and all records of that tenant requesting or receiving an RPP for the Site. The Applicant shall take all reasonable steps to obtain and review such records for noncompliance with such lease provisions. The Applicant shall also (i) oppose any effort by Project residents or others to add the Site to the list of properties eligible for RPPs; and (ii) if the Applicant sells any unit(s) at the Project, the Applicant shall add a covenant that runs with the land to the deed for the unit(s) prohibiting residents from applying for or obtaining RPPs.

D. ADDITIONAL COMMITMENTS TO ANC 3E

1. **Prior to the issuance of the first certificate of occupancy for the Project, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has reserved a minimum of 4,971 square feet in the Project solely for use as a full-service Restaurant Space where food is (i) delivered to the tables by a server; (ii) paid for after consumption; and (iii) served on non-disposable plates with non-disposable cutlery. Notwithstanding the definition of “Restaurant” in 11-B DCMR § 100.2, the tenant of the Restaurant Space may be permitted to serve alcoholic beverages, provide entertainment including televisions and live and/or amplified music, and allow dancing, but such uses shall be subject to any otherwise-applicable licensing restrictions, and the ANC shall be free to render any such advice it deems appropriate on any future applications for new licenses or renewals.
2. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has installed all

kitchen exhaust systems associated with the eating and drinking establishment use so that they vent to the roof of the Project.

3. **For the life of the Project**, the Applicant shall prohibit the following uses at the Property: sexually-oriented business establishment; a check-cashing establishment; a pawnbroker; a bank; a nightclub as defined by ABRA; a mattress store; a convenience store such as 7-Eleven; a professional office; a drug store such as CVS; and any “chain” retail, service, or food service establishment (a “chain” being defined as a business with either at least 10 stores within the District of Columbia or at least 50 stores nationwide). Notwithstanding the foregoing, the ANC may approve a use otherwise prohibited in this paragraph that the ANC believes would provide substantial value for the community. Such approval shall be granted by the ANC only by a formal resolution.
4. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has prepared a loading management plan for the Project, which the Applicant shall implement **for the life of the Project**.

E. CONDITIONS LIMITING USE OF THE ROOFTOP RESTAURANT/BAR

1. **For the life of the Project**, the Applicant shall:
 - a. Restrict the hours of operation and use of roof to no later than midnight;
 - b. Prohibit live or amplified music on the roof; and
 - c. Shield all lighting so it is contained to the roof area and turned off by 1:00 a.m. except for any code-required emergency lights.

F. MISCELLANEOUS

1. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.

3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On October 29, 2018, upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull, and Peter A. Shapiro to approve).

On December 17, 2018, upon the motion of Commissioner May, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter A. Shapiro, not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on March 1, 2019.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ZONING COMMISSION OF THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 18-15
Z.C. Case No. 18-15
Square 656 Owner, LLC
(Capitol Gateway Design Review @ Square 656)
December 17, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on November 29, 2018 (“Public Hearing”) to consider an application by Square 656 Owner, LLC (“Applicant”) for design review approval of development of an approximately 154-room hotel with accessory meeting and function space, as well as a restaurant and surface parking (“Project”) in the Capitol Gateway (“CG”) 4 zone at 69 Q Street, S.W. (Square 656, Lots 35-43, or the “Property”). Because the Project is located in Square 656, 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 § 603.1 and 11-K DCMR § 512.7, the Applicant also requested a variance from the public plaza requirement requirements of 11-K DCMR § 504.13, a variance from the vehicle parking space size requirements of 11-C DCMR § 712.3 and 11-K DCMR § 513.2, a special exception from the vehicle parking number requirements of 11-C DCMR § 701.5 and 11-K DCMR § 513.2, and a special exception from the penthouse setback requirement of 11-C DCMR § 1502.1(d).

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. At a public meeting on December 17, 2018, having considered the record and based on the findings of fact and conclusions of law laid out below, the Commission **APPROVED** the application.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The Property consists of approximately 13,696 square feet of land and is located in the CG-4 zone. (Exhibit [“Ex.”] 11A1.)
2. The Property is located in the Buzzard Point neighborhood of the southwest quadrant of the District. (Ex. 2.)
3. On March 16, 2018, 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 September 7, 2018, 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, as permitted under 11-X DCMR § 603.1 and 11-K DCMR § 512.7, the Applicant also

- requested a variance from the public plaza requirement requirements of 11-K DCMR § 504.13, a variance from the vehicle parking space size requirements of 11-C DCMR § 712.3 and 11-K DCMR § 513.2, and a special exception from the vehicle parking number requirements of 11-C DCMR § 701.5 and 11-K DCMR § 513.2. (Ex. 2.)
5. On October 30, 2018, the Applicant filed a Comprehensive Transportation Review (“CTR”) for the Project. (Ex. 9-9B.)
 6. On November 9, 2018, the Applicant filed a pre-hearing statement with revised plans reflecting feedback from and discussions with government agencies and requesting additional special exception relief from the penthouse setback requirement of 11-C DCMR § 1502.1(d). (Ex. 11-11C.)
 7. On November 15, 2018, Hosea McClain, Gazmyn McClain, Sylvia Carroll, Geraldine McClain, and Francenia McClain (collectively, the “McClains”) filed a request for party status in opposition to the Project. (Ex. 12.)
 8. The Office of Planning (“OP”) filed a report dated November 19, 2018 (“OP Report”), which found that the Project was generally consistent with the design review parameters of the Zoning Regulations and fully supported the design review application, including the requested plaza variance relief, parking space size variance, parking space number special exception, and penthouse setback special exception pending the Applicant provide certain additional information. (Ex. 13.) A discussion of the OP Report appears in the portion of this Order entitled Agency Reports.
 9. The District Department of Transportation (“DDOT”) filed a report dated November 20, 2018 (“DDOT Report”) recommending approval of the Project with certain conditions. (Ex. 14.) A discussion of the DDOT Report appears in the portion of this Order entitled Agency Reports.
 10. At its regularly scheduled and duly noticed public meeting on November 19, 2018, ANC 6D voted 5-0-1 to support the Project. ANC 6D filed a written report with the Commission on November 27, 2018, referencing its vote in support of the Project. (Ex. 20.) A discussion of the report appears in the portion of this Order entitled Agency Reports.
 11. On November 20, 2018, the Applicant made a motion to waive the prohibition of 11-Z DCMR § 401.5 on supplementing an application within 20 days of a scheduled public hearing in order to submit resumes and outlines of testimony of two witnesses, Hank Alinger of Bohler Engineering and Mike Babcock of Sustainable Building Partners. (Ex. 15-16C.)
 12. After proper notice, the Commission held a Public Hearing on the application on November 29, 2018. Parties to the case were the Applicant and ANC 6D. The Commission granted the Applicant’s motion to allow the late filing of the resume and testimony of two proposed expert witnesses. The Commission then accepted as expert

witnesses on behalf of the Applicant the following: Dominic Giordano of BBGM, the Project’s architect, and Jami Milanovich of Wells + Associates, the Project’s transportation consultant, both of whom had been previously accepted as expert witnesses by the Commission; as well as Hank Alinger of Bohler Engineering, the Project’s landscape architect, as an expert witness in landscape architecture, and Mike Babcock of Sustainable Building Partners, the Project’s sustainable design consultant as an expert witness in sustainable design, construction, and building energy performance. (Transcript of the November 29, 2018 Public Hearing [“Tr.”] at 7-12.) Evan Weisman of Donohoe Development Company and Thomas Penny III of Donohoe Hospitality appeared on behalf of the Applicant.

13. Neither the McClains nor their representative were present at the Public Hearing during which their request for party status was considered. At the Public Hearing, the Commission found that such failure to attend the Public Hearing was deemed to constitute withdrawal of the party status request under 11-Z DCMR § 404.11. (Tr. at 7.)
14. At the Public Hearing, the Applicant introduced the Project generally and presented recent refinements to the Project based on agency comments. The Applicant and its experts satisfactorily addressed questions and requests for information by OP and DDOT in their respective reports, including providing a materials and color board; additional information on valet parking, employee showers, penthouse setbacks, public space dimensions, and sidewalk alignment; and additions to the Transportation Demand Management (“TDM”) plan. (Ex. 22A-22C; Tr. at 13-64.)
15. Elisa Vitale of OP and Jonathan Rogers of DDOT testified in support of the Project at the Public Hearing. (Tr. at 64-70.)
16. ANC 6D06 Single-Member Commissioner Rhonda Hamilton testified on behalf of ANC 6D in support of the Project at the Public Hearing. (Tr. at 70-77, 84-85.)
17. At the Public Hearing, the Commission requested that the Applicant make a post-hearing submission of additional information regarding: (a) the current residences of the former occupants of the rowhomes on the Property, (b) written confirmation from the Department of Housing and Community Development with respect to the departure process of the former occupants of the rowhomes on the Property, (c) the Project’s LEED Scorecard, (d) the lighting of the hotel signage, and (e) an additional schematic showing the potential for underground parking on the Property. The Commission also requested that the Applicant’s plans be updated to be consistent in style and formatting throughout. The Commission and ANC Commissioner Hamilton also requested that the Applicant review the architectural embellishment on the southeast corner of the 9th floor of the Project. (Tr. at 40-41, 45-46, 96-97, 103-104.)
18. In its post-hearing submission, the Applicant provided: (a) information on what the Applicant discovered regarding the current residences of the former occupants of the rowhomes on the Property, (b) written confirmation from the Department of Housing and Community Development that the departure process of the former occupants was in

compliance with applicable notice and eviction regulations, (c) the Project’s LEED scorecard, (d) plans detailing the lighting of the hotel signage, and (e) a schematic showing the difficulty of providing underground parking on the Property. The Applicant’s revised plans have consistent style and formatting throughout. The Applicant also submitted information regarding its review of the architectural embellishment on the southeast corner of the 9th floor of the Project and determined that an architectural embellishment supports the creation of a “distinctive and memorable gateway” in the neighborhood and in this Capitol Gateway 4 Zone in furtherance of Policy UD-1.4.2 of the Comprehensive Plan. (Ex. 29-29E.)

19. The Commission finds that the Applicant responded completely to the Commission’s questions and comments at the Public Hearing and in its post-hearing submission materials.
20. At a public meeting held on December 17, 2018, the Commission, having considered the testimony provided at the Public Hearing and in the record, voted to approve the Application.

Project Overview

Description of Surrounding Area

21. The Property is located in the Buzzard Point neighborhood in southwest Washington. (Ex. 2.)
22. The Property comprises half of the block between Half and First Streets along Q Street. It is bound by a 16-foot public alley to the west, Half Street to the east, Q Street to the south, and a 16-foot public alley to its north. (Ex. 2, 11A, 22A.)
23. The Property is located one block north of the soccer stadium, one block west of South Capitol Street and Nationals Park, and one block east of Fort McNair. An entrance to the Navy Yard Metrorail Station is located approximately one-half-mile north of the Property on Half Street, S.E. (Ex. 2, 11A, 22A.)
24. The Property faces a Capitol Building Supply Warehouse to its south across Q Street that is expected to be redeveloped. To the west, across the public alley, the Project faces two-story rowhouses, which are located between the Project and what will soon be an approximately 114-foot-tall affordable housing project, approved in Z.C. Case No. 17-13. To the north of the Property, across the public alley, is a warehouse that is currently used as a CrossFit Gym, which abuts an auto repair shop to its north. To the east of the Property, across Half Street, is another auto repair shop, which is expected to be redeveloped. (Ex. 2, 11A, 22A.)

The Property

25. The Property is 13,696 square feet in size and occupies Lots 35-43 in Square 656. (Ex. 11A, 22A.)

26. The Property is comprised of nine separate record lots, eight of which are improved with a two-story rowhouse, the last improved with a two-story, two-unit building, all of which are currently vacant. The Applicant plans to raze the existing buildings and construct the Project. (Ex. 2, 11A, 22A.)

Project Description

27. The Property is located in the CG-4 zone. Generally, the CG zones were established to promote nine primary goals:
- (a) 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;
 - (b) Encourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural, and hotel uses;
 - (c) Allow for continuation of existing industrial uses, which are important economic assets to the city, during the extended period projected for redevelopment;
 - (d) 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;
 - (e) Require suitable ground-level retail and service uses and adequate sidewalk width along M Street, S.E., near the Navy Yard Metrorail station;
 - (f) Provide for development of Squares 702-706 and Reservation 247 as a ballpark for major league sport and entertainment and associated uses;
 - (g) Provide for the establishment of South Capitol Street between M Street, S.E., and the Anacostia waterfront as a monumental civic boulevard;
 - (h) 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
 - (i) 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.)
28. The purposes of the CG-4 zone specifically are to permit medium- to high-density mixed-use development with a balance of uses conducive to a higher quality of life and environment for residents, businesses, employees, and institutions; encourage provision

of active pedestrian-oriented streets with active ground-floor uses, particularly along specified primary streets; and promote pedestrian safety by separating pedestrian and vehicular circulation patterns. (11-K DCMR § 504.1.)

29. The Project consists of approximately 82,176 square feet of gross floor area, comprised of approximately 76,514 square feet of gross floor area of residential hotel use and approximately 4,625-6,600 square feet of gross floor area of commercial use. The Project has a density of 6.0 floor area ratio (“FAR”) and a height of 90 feet. The project will occupy 68% of the lot. The 9th floor of the Project will include hotel amenity space, function space, and a terrace. While events will take place on the 9th floor, the Applicant testified that it would not be a “nightclub” and would not be disruptive for the community. (Ex. 11A, 22A; Tr. at 50-51.)
30. The Property will be developed with a hotel consisting of approximately 154 rooms. The hotel entrance will be oriented on Q Street in the middle of the block. The hotel’s Q Street frontage closest to the intersection with Half Street will be a restaurant with outdoor seating. The other side of the lobby to the west will contain meeting space. (Ex. 2, 11A, 22A.)
31. All vehicular circulation will occur at the rear of the building. The Project will provide eight parking spaces, two of which will be full-sized spaces, and six which will be compact-sized spaces, and all of which will be accessed directly from the public alley to the north of the Property. The Applicant has requested special exception relief to allow the reduced number of parking spaces, and variance relief to allow the mix of parking space size to deviate from the 50% full-size space requirement. (Ex. 2, 11A, 22A.)
32. All loading will occur via two berths to the rear of the Project accessed from the public alleys. The Project will provide both long- and short-term bicycle parking in compliance with Zoning Regulations. (Ex. 2, 11A, 22A.)
33. The Project will provide a building entrance on the northern side for employees, which will provide direct access to the long-term bike storage area. The Project will also include employee lockers and showers in the number required by the Zoning Regulations. The Project will include a drop-off zone for temporary guest loading and unloading in front on the hotel’s main entrance on Q Street, S.W. (Ex. 2, 11A, 22A.)
34. The Project will be built in an environmentally sustainable fashion with the Applicant committing to certification to LEED v. 4 Silver. The Project meets or exceeds current District Storm Water Management Requirements, and will include solar panels and a green roof, as well as permeable pavers. The Project will limit outdoor and indoor water use with low flow fixtures and sustainable landscaping. The Project’s green area ratio (“GAR”) satisfies the minimum requirements of the CG-4 zone. (Ex. 2, 11A, 22A.)
35. The Project includes high quality materials and a color palate that complements the existing and planned surrounding buildings. The Project includes bay projections to create a visually engaging façade. The northern façade will be similar to the southern

façade, except that the ground floor will not engage the exterior in the same way. The ground floor will utilize dark, rusticated brick to buffer the back of house spaces within the hotel from the properties located to the north. (Ex. 2, 11A, 22A.)

36. The materials used on the northern and southern façades will wrap around onto the east and west elevations. The west elevation, which is where the hotel's stairs are located, will mimic the window pattern of the east elevation, but will utilize two distinct colors of brick cladding instead of glass. (Ex. 2, 11A, 22A.)

Design Approval

37. 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.

38. The Project satisfies the CG design review criteria as set forth in 11-K DCMR § 512.3 as follows:

- (a) *The proposed building will achieve the objectives of the Capital Gateway as defined in Subtitle K § 500.1. (11-K DCMR § 512.3(a).)*

The Project will satisfy the applicable purposes of the Capital Gateway zones that are set forth in Findings of Fact 27 hereof. The Applicant is proposing a hotel, which will add to the mix of uses currently in Buzzard Point. The mix of nearby military, athletic, residential, and office uses, coupled with the site's proximity to downtown, make this a prime destination for visitors. Introducing a hotel on Q Street will serve those visitors coming to the area to attend a baseball or soccer game, a meeting at a nearby office building, visiting family or sightseeing in the District. The convenience provided by the hotel's location will attract visitors to this neighborhood who may have otherwise stayed elsewhere in the District. The Project will replace vacant buildings and will not result in the discontinuation of an industrial use; (Ex. 2, 11A, 13, 22A.)

- (b) *The proposed building will help achieve the desired use mix, with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail, or service uses. (11-K DCMR § 512.3(b).)*

The proposed use is a hotel, which is a preferred use and complements the mix of uses in Buzzard Point and will serve visitors to the area. It will include a restaurant on its ground floor that will not only serve hotel guests, but will also be open to the public. The Project will involve the replacement of an underutilized property with a well-designed building occupied by a preferred use; (Ex. 2, 11A, 13, 22A.)

- (c) *The proposed building will be in context with the surrounding neighborhood and street patterns. (11-K DCMR § 512.3(c).)*

The Project is appropriately designed given its existing context and the anticipated context, once neighboring sites are developed. Much of the property along Q Street is being marketed for redevelopment, including some of the low-scale residential, retail, and industrial sites. The hotel is buffered from adjacent uses by either public roadways or alleyways. Nevertheless, the hotel is designed to respect adjacent uses. The hotel minimizes its height by incorporating the penthouse spaces within the 90-foot envelope for the Project. It also steps the top floor of the building back from Q Street and the entire building is set back from the public alley to its north, which minimizes the perception of building height from the pedestrian's vantage point and buffers the building from uses to its north. The façades of the hotel incorporate a design pattern to create visual interest for neighboring properties. The Project's building materials will complement the brick exteriors of the surrounding residential buildings and will create a coherent sense of design throughout the block; (Ex. 2, 11A, 13, 22A.)

- (d) *The proposed building will minimize conflict between vehicles and pedestrians. (11-K DCMR § 512.3(d).)*

The design promotes a safe and efficient pedestrian experience by concentrating vehicular access to the site from the public alleys. The Project does not anticipate a significant amount of vehicular traffic; employee vehicular and bicycle traffic will be directed to the rear of the building via public alleyways. The Applicant proposes to widen Q Street by four feet for the portion of the roadway abutting the Property, which will allow the Applicant to provide valet parking services for guests and visitors without affecting traffic flow on Q Street. The Applicant will also be improving the pedestrian experience by improving the public spaces, including the sidewalks, in conformance with the Buzzard Point streetscape guidelines; (Ex. 2, 11A, 13, 22A.)

- (e) *The proposed building will minimize unarticulated blank walls adjacent to public spaces through façade articulation. (11-K DCMR § 512.3(e).)*

The proposed building façades are highly articulated and defined, including bay projections. The ground floor along Q Street incorporates operable windows to engage the pedestrian level and will include outdoor restaurant seating to create activity along the streetscape. The ground floor of the west façade fronting on the north-south alley will not feature windows so as to maintain the privacy of the residents of the rowhomes across the alley. The upper levels of the west façade also will not include windows, but instead feature a variety of colors and materials to create a design pattern mimicking the windows found on the south façade. The Commission finds that the building design incorporates high quality building

materials and meets the objectives of the Capital Gateway area to enliven the streetscape with articulated façades; and (Ex. 2, 11A, 13, 22A.)

- (f) *The proposed building will minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards. (11-K DCMR § 512.3(f).)*

The Project is pursuing LEED-Silver certification for new construction. Some of the key “green” and sustainable features include enhanced stormwater management practices, “smart” hotel rooms, and reduced parking. The Project will be designed to limit both outdoor and indoor water use by featuring low flow fixtures and sustainable landscaping. The tall, high-efficiency windows will introduce increased daylighting and thermal comfort. The site will also include green roof facilities, solar panels for renewable energy production, bio retention zones, and permeable surfaces. (Ex. 2, 11A, 13, 22A.)

39. The Commission finds that the proposed use, design and sustainability features, and site layout of the Project satisfy the design review criteria set forth in 11-K DCMR § 512.3.
40. Pursuant to 11-X DCMR § 604.2, for non-voluntary design review, the application must meet the requirements of the provisions that mandated Commission approval. As discussed in Findings of Fact 38-39 hereof, the application meets the provisions of 11-K DCMR § 512 that mandate Commission approval.
41. The Applicant has the burden of proof to justify the granting of the application according to the design review parameters of the Zoning Regulations. (11-X DCMR § 604.3.) The Applicant’s filings, testimony, and expert witness presentations are credible and thorough and reasonably adequate to support the Commission’s analysis and conclusions contained herein. Accordingly, the Applicant has provided substantial evidence to demonstrate that the Project satisfies the relevant design review evaluation standards.
42. The Project satisfies the general design review criteria of 11-X DCMR § 604 insofar as the Project will not be inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site. (11-X DCMR § 604.5.)
43. The purposes of the Comprehensive Plan are to: (a) define the requirements and aspirations of District residents, and accordingly influence social, economic, and physical development; (b) guide executive and legislative decisions and matters affecting the District and its citizens; (c) promote economic growth in jobs for District residents; (d) guide private and public development in order to achieve District and community goals; (e) maintain and enhance the natural and architectural assets of the District; and f) assist in conservation, stabilization, and improvement of each neighborhood and community in the District. (D.C. Official Code § 1-245(b).)
44. The Project advances these purposes by furthering the social and economic development of the District and stabilizing the neighborhood through the construction of a new hotel to

serve the mix of uses in Buzzard Point. The development will also enhance the streetscape and create a pedestrian-friendly experience. The construction and operation of the Project will introduce new jobs to the District and specifically to the Buzzard Point neighborhood. (Ex. 2, 11A, 13, 22A.)

45. The Project is not inconsistent with the Comprehensive Plan, its Future Land Use Map, and with other adopted public policies and active programs related to the Property.
46. The Future Land Use Map (“FLUM”) designates the Property as appropriate for medium-density residential uses. The proposed development, with an overall FAR of 6.0 and a height of 90 feet is consistent with this designation. The hotel provides a daytime presence in the community and complements the existing uses in the neighborhood, including the residential uses. OP testified that a hotel use in the Capitol Gateway Zones has long been considered a residential use. (Ex. 2, 11A, 13, 22A; Tr. at 70.)
47. The Project will promote several Comprehensive Plan policies, including the land use, transportation, environmental protection, urban design, economic development, and the Lower Anacostia Waterfront and Near Southwest Area elements as follows:
 - (a) Land Use Element: The Comprehensive Plan cites the importance of ensuring that the impacts of a hotel use do not have a detrimental effect on neighboring residential uses. The Project is consistent with the following land use policies of the Comprehensive Plan:
 - (i) Policy LU-1.1.5: Urban Mixed-Use Neighborhoods: Encourage new central city mixed-use neighborhoods combining high-density residential, office, retail, cultural, and open space uses in the following areas: Mount Vernon Triangle, North of Massachusetts Avenue (NoMA), Downtown East South Capitol Street corridor/Stadium area, Near Southeast/Naval Yard. The location of these areas is shown in the Central Washington and Lower Anacostia Waterfront/Near Southwest Area Elements. Land use regulations and design standards for these areas should ensure that they are developed as attractive pedestrian-oriented neighborhoods, with high quality architecture and public spaces. Housing, including affordable housing, is particularly encouraged and should be a vital component of the future land use mix; and
 - (ii) Policy LU-2.4.11: Hotel Impacts: Manage the impacts of hotels on surrounding areas, particularly in the Near Northwest neighborhoods where large hotels adjoin residential neighborhoods. Provisions to manage truck movement and deliveries, overflow parking, tour bus parking, and other impacts associated with hotel activities should be developed and enforced.

The Buzzard Point Vision Framework Plan¹ notes that the area near the proposed Oval Park is a prime location for a hotel because it maximizes its proximity to established circulation routes and federal establishments. The Project will also support the civic and cultural opportunities introduced in effectuation of the Framework Plan. The Project will improve pedestrian spaces with landscaping and new sidewalks consistent with the Buzzard Point Vision Framework Plan. The circulation pattern of the hotel also diminishes impacts on adjacent residential properties by providing all access to the parking and loading from public alleyways. Moreover, the hotel encourages use of alternative forms of transportation by minimizing the number of parking spaces onsite and providing biking facilities; (Ex. 2, 11A, 13, 22A.)

- (b) Transportation Element: The Project is consistent with the following transportation policies of the Comprehensive Plan:
- (i) Policy T-1.1.4: Transit-Oriented Development: Support transit-oriented development by investing in pedestrian-oriented transportation improvements at or around transit stations, major bus corridors, and transfer points;
 - (ii) Policy T-1.2.3: Discouraging Auto-Oriented Uses: Discourage certain uses, like “drive-through” businesses or stores with large surface parking lots, along key boulevards and pedestrian streets, and minimize the number of curb cuts in new developments. Curb cuts and multiple vehicle access points break-up the sidewalk, reduce pedestrian safety, and detract from pedestrian-oriented retail and residential areas;
 - (iii) Policy T-2.3.1: Better Integration of Bicycle and Pedestrian Planning: Integrate bicycle and pedestrian planning and safety considerations more fully into the planning and design of District roads, transit facilities, public buildings, and parks;
 - (iv) Policy T-2.3.2: Bicycle Network: Provide and maintain a safe, direct, and comprehensive bicycle network connecting neighborhoods, employment locations, public facilities, transit stations, parks, and other key destinations. Eliminate system gaps to provide continuous bicycle facilities;
 - (v) Policy T-2.4.1: Pedestrian Network: Develop, maintain, and improve pedestrian facilities. Improve the city’s sidewalk system to form a network that links residents across the city; and

¹ Published by OP, November 2017, available at https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/Buzzard%20Point%20VF_web_final.pdf.

- (vi) Policy T-2.4.2: Pedestrian Safety: Improve safety and security at key pedestrian nodes throughout the city. Use a variety of techniques to improve pedestrian safety, including textured or clearly marked and raised pedestrian crossings, pedestrian-actuated signal push buttons, and pedestrian count-down signals.

The Project discourages auto-oriented uses by limiting the number of parking spaces available onsite for both its employees and visitors and by providing long- and short-term bicycle spaces as well as showers and lockers for employee use. The Project is approximately one-half mile from the Waterfront and Navy Yard Metrorail stations and is served by Metrobus Route 74. The Applicant will also provide a 19-dock Capital Bikeshare station adjacent to the site or a nearby location, subject to DDOT approval. The Applicant will fund one year of operating expenses of the Capital Bikeshare station. The Project does not propose any curbcuts and relies only on the public alleys for vehicular access to parking and loading, thus minimizing the potential for conflicts between vehicles and pedestrians. The Project is improving the pedestrian experience by opening the ground-floor restaurant onto the public space area to create activity along the street. The Applicant is also reconstructing and landscaping the public spaces, consistent with the Buzzard Point Vision Framework Plan, to engage pedestrians as they walk by. Finally, the Applicant is widening Q Street by four feet along the portion that abuts the Property, as requested by DDOT in its report, so as to improve vehicular circulation in the community; (Ex. 2, 11A, 13, 14, 22A.)

- (c) Environmental Protection Element: The Project is consistent with the following environmental protection policies of the Comprehensive Plan:
 - (i) Policy E-1.1.3: Landscaping: Encourage the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity;
 - (ii) Policy E-4.1.5: Improving Air Quality Through Transportation Efficiency: Promote strategies that reduce motor vehicle emissions in the District and surrounding region. As outlined in the Land Use and Transportation Elements of this Comprehensive Plan, this includes the development of a fully integrated regional system of buses, streetcars, rail transit, bicycles, taxis, and pedestrian facilities to make it easier and more convenient to travel without an automobile. It also includes the promotion of trip reduction measures such as videoconference facilities, telecommuting, flextime, and carpooling. Strategies to reduce congestion and idling time, such as improved signal timing and reversible commute lanes, also should contribute to air quality improvement; and
 - (iii) Policy E-4.2.3: Control of Urban Runoff: Continue to implement water pollution control and “best management practice” measures aimed at

slowing urban runoff and reducing pollution, including the flow of sediment and nutrients into streams, rivers, and wetlands.

The Project incorporates elaborate landscaping that not only provides aesthetic benefits, but environmental benefits as well. The Project will implement a combination of Storm Water Best Management practices such as green roofs, bio retention planters, and permeable pavement to meet or exceed the current District Storm Water Management Requirements. The practices will reduce runoff from the two-year storm event to a pre-development, meadow condition rate and the 15-year storm event will not exceed the runoff rate based on the current site conditions. The Applicant's expert in sustainable design testified to a number of additional items that the Project will explore and incorporate to improve its LEED rating, including optimization of on-site renewables, use of LED lighting, HVAC efficiency and utilization, Energy Star appliances, low/no VOC materials, lighting controls, and ventilation airflow monitoring. The Project also encourages alternative modes of transportation to reduce reliance on automobiles; (Ex. 2, 11A, 13, 22A.)

- (d) Urban Design Element: The Project furthers the following urban design elements of the Comprehensive Plan:
- (i) Policy UD-1.3.7: Neighborhood Connectivity: Improve the physical connections between neighborhoods and nearby waterfronts. Where feasible, extend the existing city grid into large waterfront sites to better connect nearby developed areas to the shoreline;
 - (ii) Policy UD-1.4.1: Avenues/Boulevards and Urban Form: Use Washington's major avenues/boulevards as a way to reinforce the form and identity of the city, connect its neighborhoods, and improve its aesthetic and visual character. Focus improvement efforts on avenues/boulevards in emerging neighborhoods, particularly those that provide important gateways or view corridors within the city;
 - (iii) Policy UD-1.4.2: City Gateways: Create more distinctive and memorable gateways at points of entry to the city, and points of entry to individual neighborhoods and neighborhood centers. Gateways should provide a sense of transition and arrival and should be designed to make a strong and positive visual impact;
 - (iv) Policy UD-1.4.3: Avenue/Boulevard Vistas and View Corridors: Protect views and view corridors along avenues/boulevards, particularly along streets that terminate at important civic monuments or that frame distant landmarks. Vistas along such streets should be accentuated by creating more well-defined street walls, improving landscaping, and requiring the highest architectural quality as development takes place.; and

- (v) Policy UD-3.1.8: Neighborhood Public Space: Provide urban squares, public plazas, and similar areas that stimulate vibrant pedestrian street life and provide a focus for community activities. Encourage the “activation” of such spaces through the design of adjacent structures, for example, through the location of shop entrances, window displays, awnings, and outdoor dining areas.

The Buzzard Point Vision Framework Plan notes that retail and service uses should be located near both the soccer stadium and Oval Park, which is achieved by the introduction of the Project on Q Street. Q Street is a 2.5-block roadway that dead ends at 2nd Street to the west and dead ends before meeting South Capitol to the east (Q Street, S.W. is expected to feed into the South Capitol Street Oval once the Oval is constructed). Q Street currently has limited ability to connect neighborhoods and currently does not attract pedestrians along the corridor. The Project, will significantly improve the pedestrian areas to facilitate east-west connections between South Capitol Street and Fort McNair, as well as north-south connections toward the Anacostia River. The Property includes a generous amount of public space at its frontage along Q Street, which will be landscaped and beautified pursuant to Buzzard Point Streetscape guidelines. The Applicant is also proposing to provide operable windows that will open up the ground-floor restaurant to the outdoors to activate the public space along Q Street. The design of the Project creates a sense of arrival at the Property with the inclusion of an architectural embellishment on the southeast corner of the 9th Floor. The building materials and color palette create a coherent design aesthetic with the existing row houses on the block and the surrounding neighborhood; (Ex. 2, 11A, 13, 22A.)

- (e) Economic Development Element: The Project promotes the following economic development policies of the Comprehensive Plan:
 - (i) Policy ED-1.1.1: Core Industries: Continue to support and grow the District’s core industries, particularly the federal government, professional and technical services, membership associations, education, hospitality, health care, and administrative support services;
 - (ii) Policy ED-1.1.2: Economic Linkages: Leverage the potential of core industries to provide new employment opportunities, particularly the growth of businesses that supply essential goods and services to the government, universities, hospitals, law firms, hotels, non-profits, and other major employers in the city;
 - (iii) Policy ED-2.3.1: Growing the Hospitality Industry: Develop an increasingly robust tourism and convention industry, which is underpinned by a broad base of arts, entertainment, restaurant, lodging, cultural and government amenities. Strive to increase: (a) the total number of visitors to Washington; (b) the number of visitors staying in the District (rather

than in suburban hotels); and (c) longer visitor stays in Washington. Promote the District not only as the preferred base for exploring the city's attractions, but also the preferred overnight base for visiting regional attractions; and

- (iv) Policy ED-2.3.4: Lodging and Accommodation: Support the development of a diverse range of hotel types, serving travelers with varying needs, tastes, and budgets. New hotels should be encouraged both within Central Washington and in outlying commercial areas of the city, particularly in areas which presently lack quality accommodation.

The Project introduces a hotel, which is a use not currently located in this area of Buzzard Point. The hotel use is a complementary use to nearby athletic venues, offices, and residential uses and helps improve the success of these uses, particularly the venues, by facilitating visitor access. The construction and operation of the Project will introduce jobs to the Buzzard Point neighborhood. The Applicant proposes to work with Ward 6 to promote job training and job placement for residents of the community and has already taken part in a job training program at the Southwest Family Enhancement Center. The Applicant entered into an agreement with the ANC to use best efforts to hire 20% qualified D.C. residents, with a focus on residents in ANC 6D, as hotel employees; and (Ex. 2, 11A, 13, 20A, 22A; Tr. at 16-18, 39-40, 60-61.)

- (f) Lower Anacostia Waterfront/Near Southwest Area Element. The Project is consistent with the following goals of the Lower Anacostia Waterfront/Near Southwest Area Element:
 - (i) Policy AW-1.1.7: Multi-modal Waterfront Streets: Design streets along the waterfront to be truly multi-modal, meeting the needs of pedestrians, bicyclists, and transit users as well as motor vehicles. Safe pedestrian crossings, including overpasses and underpasses, should be provided to improve waterfront access;
 - (ii) Policy AW-2.2.7: Buzzard Point: Support the long-term redevelopment of Buzzard Point with mixed medium- to high-density commercial and residential uses. Recognize the opportunity for innovative design and architecture in this area, and for the creation of a unique urban waterfront; and
 - (iii) Policy AW-2.2.2: Ballpark Entertainment District: Leverage the construction of the Washington Nationals Ballpark to catalyze development of the South Capitol Street corridor with retail, high-density residential, entertainment, and commercial uses.

The Project introduces a use not currently located in this area of Buzzard Point. It is a complementary use to nearby athletic venues, offices, and residential uses and

helps improve the success of these uses, particularly the venues, by facilitating visitor access. (Ex. 2, 11A, 13, 22A.)

48. The Project meets the general special exception criteria of Subtitle X, Chapter 9 and will not tend to affect adversely the use of neighboring property. (11-X DCMR § 604.6.) The Project will be harmonious with the general purpose and intent of the Zoning Regulations and Zoning Maps for the CG-4 zone as well as the Buzzard Point Vision Framework and the Comprehensive Plan, as discussed in Findings of Fact 37-47 above.
49. The Project will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. The Project is in keeping with the scale of density and height of the CG-4 zone and responds architecturally to the surrounding buildings and fits appropriately into that context. It introduces a hotel use to the community, which will complement the mix of uses in Buzzard Point and attract visitors to the area. The Applicant has designed its building to minimize any impacts on adjacent properties and it has developed transportation policies that will mitigate any transportation impacts that may result from the Project. The Applicant has not included windows on the west façade of the Project in order to maintain the privacy of residents in the rowhomes to the west of the Project across the alley. These rowhomes are also located in the CG-4 zone and may therefore be redeveloped at a greater height and density in the future. The design also incorporates a setback at the ninth story to minimize the perceived height of the building and its penthouse is reduced in height. The Project also utilizes the existing alley network and is proposing to widen Q Street to create safe and efficient circulation plan as requested by DDOT. (Ex. 2, 11A, 13, 14, 22A; Tr. at 25.)
50. The Applicant has extensively coordinated with ANC 6D to address community requests and committed to provide a Construction Management Plan to ANC 6D, to sign a Neighbor Agreement with ANC 6D, to complete a Construction and Dust Management Plan in collaboration with the developers of 1530 1st Street, S.W. and 1550 1st Street, S.W. and to assemble a team of transportation consultants and experts to address and manage egress, transportation issues, and parking concerns for at least six months after the opening of the hotel. The Applicant has also committed to a robust TDM plan to further mitigate any potential traffic or transportation impacts of the Project. (Ex. 2, 11A, 13, 22; Tr. at 15-16, 17, 36-37, 43, 56-58, 70-77.)
51. The Project also satisfies the urban design criteria of 11-X DCMR § 604.7 as follows:
 - (a) *Street frontages are designed to be safe, comfortable, and encourage pedestrian activity, including: (1) Multiple pedestrian entrances for large developments; (2) Direct driveway or garage access to the street is discouraged; (3) Commercial ground floors contain active uses with clear, inviting windows; (4) Blank façades are prevented or minimized; and (5) Wide sidewalks are provided. (11-X DCMR § 604.7(a).)*

The Property fronts on Q and Half Streets, S.W. The Building provides one central pedestrian entrance on Q Street. The Project utilizes existing alleys for vehicular and parking access. The ground floor will incorporate a restaurant that, while associated with the hotel, will be open to the public. The design incorporates operable windows which will allow the interior activity of the restaurant to flow to the public realm. The design has no blank façades. The western façade does not incorporate windows because it abuts the stairwell, which will maintain privacy for the existing rowhomes to the west of the Project; however, the design incorporates panels of material that mimic the window design throughout the rest of the building. Finally, the Project will include sidewalks meeting the streetscape requirements set forth in the Buzzard Point Vision Framework Plan. (Ex. 2, 11A, 13, 22A; Tr. at 24-25.)

- (b) *Public gathering spaces and open spaces are encouraged, especially in the following situations: (1) Where neighborhood open space is lacking; (2) Near transit stations or hubs; and (3) When they can enhance existing parks and the waterfront. (11-X DCMR § 604.7(b).)*

The Project will include a sidewalk café, which will be open to the public for use. The Property is also located one block to the west of the proposed South Capitol Street Oval, which will include extensive public gathering spaces for the community. The Buzzard Point Vision Framework Plan notes that there will be at least nine parks in the Buzzard Point area; in fact, approximately 10% of the Buzzard Point land area is slated for recreational open space and social spaces (not including additional open space used as a linear waterfront park). Moreover, the Framework Plan also anticipates that streets will extend these open spaces with generous pedestrian areas and extensive plantings. Given the narrowness of the Property, the Applicant has requested a variance from the public plaza requirement of 11-K DCMR § 504.13, discussed in Finding of Fact 53-66 hereof. While the Property does not dedicate space for public gathering, there will be ample opportunity for such gathering in the vicinity of the Property. (Ex. 2, 11A, 13, 22A; Tr. at 20, 24.)

- (c) *New development respects the historic character of Washington's neighborhoods, including: (1) Developments near the District's major boulevards and public spaces should reinforce the existing urban form; (2) Infill development should respect, though need not imitate, the continuity of neighborhood architectural character; and (3) Development should respect and protect key landscape vistas and axial views of landmarks and important places. (11-X DCMR § 604.7(c).)*

The Project respects the historic character of Washington's neighborhoods. The proposed design creates a welcoming presence along Q Street. The architectural character of the community is diverse and the design and massing of the hotel bridges the gap between the larger-scale projects in the vicinity, such as the soccer stadium and the Pepco substation, with the lower scale of neighboring residential

and industrial uses. The building design employs setbacks to minimize the perception of its height. The building is taller than the adjacent townhomes, and shorter than the approved project at 1550 1st Street. The materials of the hotel reflect the residential nature of its surroundings. Given the location and scale of the building, it does not interfere with vistas of nearby landmarks, including the Capitol or the Anacostia River. (Ex. 2, 11A, 13, 22A; Tr. at 21-22.)

- (d) *Buildings strive for attractive and inspired façade design, including: (1) Reinforce the pedestrian realm with elevated detailing and design of first and second stories; and (2) Incorporate contextual and quality building materials and fenestration. (11-X DCMR § 604.7(d).)*

The building incorporates contextual and quality building materials, including high performance glazing and multiple colors of brick in robust tones employing contemporary detailing to modulate between the larger, more institutional buildings to the south and the softer residential neighborhood to the north. The strong vertical bays on the south side provide modulation to the street wall and reflect a traditional building pattern found throughout residential neighborhoods in the District of Columbia, although clad and detailed for the present-day. The north façade also incorporates vertical bays and is reserved in color to provide a quiet but pleasing foreground from the residential areas looking south. The design also includes operable windows and bay projections on the first floor, to increase visual interest and activity. (Ex. 2, 11A, 13, 22A; Tr. at 21-24, 30-21.)

- (e) *Sites are designed with sustainable landscaping. (11-X DCMR § 604.7(e).)*

The Project includes sustainable landscaping, including several bioretention zones and permeable pavers. Native plant materials will be selected for the site that are sustainable based on their hardiness, low water and low maintenance requirements, and resistance to disease and insects. (Ex. 2, 11A, 13, 22A; Tr. at 26-28.)

- (f) *Sites are developed to promote connectivity both internally and with surrounding neighborhoods, including: (1) Pedestrian pathways through developments increase mobility and link neighborhoods to transit; (2) The development incorporates transit and bicycle facilities and amenities; (3) Streets, easements, and open spaces are designed to be safe and pedestrian friendly; (4) Large sites are integrated into the surrounding community through street and pedestrian connections; and (5) Waterfront development contains high quality trail and shoreline design as well as ensuring access and view corridors to the waterfront. (11-X DCMR § 604.7(f).)*

The Project is designed to facilitate connectivity through public space improvements to ease pedestrian connectivity and by promoting the bicycle network. The Project will improve the sidewalks abutting the Property along Q

and Half Streets and it will incorporate extensive landscaping to beautify the area. These improvements are consistent with the Buzzard Point Vision Framework Plan, which calls for strengthening the connection between Oval Park and Fort McNair, as well as for beautifying area streetscapes. The Project will also incorporate both long- and short-term bicycle spaces for its employees and visitors. The Applicant will also provide a 19-dock Capital Bikeshare station near the site or in a nearby location, subject to DDOT approval and will implement a robust TDM plan for the Project. (Ex. 2, 11A, 13, 14, 22A; Tr. at 24-25.)

52. In light of the Project’s superior design, introduction of a new use to the Buzzard Point area, site layout, and transportation and landscape design, the Commission finds in accordance with 11-X DCMR § 604.8, that the foregoing criteria of 11-X DCMR § 604.7 are met in a way that is superior to any matter-of-right development possible on the site.

Variance Relief–Size of Parking Spaces and Plaza Requirements

53. The Applicant requested variance relief from 11-K DCMR § 513.2 and 11-C DCMR § 712.3 parking space size requirements, and from 11-K DCMR § 504.13 for the plaza requirement in the CG-4 zone. The Commission has jurisdiction to grant such relief under 11-X DCMR § 603.1, 11-K DCMR § 512.7, and 11-K DCMR § 512.2.
54. 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 Adjustment*, 287 A.2d 535, 541 (D.C. 1972).)
55. Under the “practical difficulty” prong, the applicant must show that compliance with the parking size space and plaza requirements would be unnecessarily burdensome and that such practical difficulty is unique to this particular property. The D.C. Court of Appeals defined “practical difficulty” in *Palmer* as the following: “generally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” (*Palmer*, 287 A.2d at 542.) In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” (*Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1365 (D.C. 1992), citing *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).) It is well settled that the BZA may consider “... a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’”. (*Gilmartin*, 579 A.2d at 1171, citing *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A. 2d 326, 327 (D.C. 1976); see also, *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992).) Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible. (Ex. 2.)

Exceptional Condition

56. The Property is subject to exceptional conditions that arise from the narrowness of the site. The Property has a depth of approximately 81.5-86.5 feet, which is a lesser depth than other properties located in the Square. The properties immediately to the west of the western alley have a depth of approximately 90 feet and the property immediately to the north of the Property has a depth of over 150 feet. The modest depth of the Property makes it challenging to incorporate additional parking, albeit surface parking or below-grade parking, as well as the public plaza space. (Ex. 2.)
57. The exceptional condition of the narrowness of the Property is further exacerbated by the proposed widening of Q Street, S.W. The provision of the public plaza and the provision of required on-site parking are at odds with each other given the narrowness of the Property. Accommodating the public plaza would require shifting the building footprint to the north of the Property. Such a shift would reduce the area available to the Applicant to provide on-site parking and push the building façade farther away from pedestrian traffic. (Ex. 13.)
58. The Commission finds that the narrowness of the Property, which may be exacerbated by the proposed widening of Q Street, creates an exceptional condition at the Property.

Practical Difficulty

59. Regarding the size of parking spaces, 11-C DCMR § 712.3 requires at least 50% of the required parking spaces meet the minimum full-sized parking space standards of 11-C DCMR § 712.5. All other spaces must meet the minimum compact parking space standards in 11-C DCMR § 712.6. However, the proposed Project will only have two full-sized spaces and six compact-sized spaces. (Ex. 11A.) Providing the required number of full-sized parking spaces is a practical difficulty on the Property given its depth. The narrowness of the Property necessitates a design that maximizes the amount of surface parking that can be provided on-site, while maintaining a functional floor plan for the hotel. In order to maintain this design, the Applicant is unable to efficiently provide the required mix of 50% full-sized parking spaces and 50% compact parking spaces. (Ex. 2.)
60. The proposed mix of two full-sized and six compact parking spaces allows the Applicant to provide a useful number of full-sized spaces, while maximizing the total number of spaces overall, given the physical constraints of the site. If the Applicant is to provide additional full-sized parking spaces, the number of compact spaces will have to be reduced, leading to an overall reduction in the number of parking spaces. (Ex. 2, 11A.)
61. Regarding the plaza, 11-K DCMR § 504.13 requires that a development on a lot greater than 10,000 square feet within a CG-4 zone must provide a plaza comprising eight percent of the lot area in accordance with the provisions of 11-C DCMR, Chapter 17. The Property's area is 13,696 square feet and the proposed Project does not provide a plaza. The narrowness of the Property constrains the site plan in that setting aside a portion for open space would be done at the detriment of either the building floor plan or the

provision of parking and loading. There is currently a generous amount of public space in front of the building, meaning that the hotel entrance is already set back nearly 28 feet from the curb, and, as a result of discussions with DDOT, the Applicant plans to further shift the curb toward the proposed building along the entire frontage of the property. (Ex. 2.)

62. Providing the required public plaza at the entrance of the building would set the entrance back even further, move the mass of the building closer to the residential neighborhood to the north, reduce parking, and minimize interaction of the building with the streetscape. The plaza would also reduce the efficiency of the floorplan, which is critical given the size of the lot. (Ex. 2.)
63. The Commission finds that the narrowness of the Property, when considered together with the objectives of maximizing the amount of surface parking area on-site and creating a fully functional hotel floor plan, would make strict compliance with the parking space size requirements and plaza requirement burdensome.

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

64. The reduction in full-sized parking spaces will not have an adverse impact on the public good or impair the intent of the Zoning Regulations because it enables the Applicant to maximize the total number of parking spaces on the site, reducing the likelihood of potential parking conflicts with neighboring properties. Additionally, parking demand is expected to be low given the proposed use and the Applicant will implement a TDM plan to mitigate impacts to the extent there are any. (Ex. 2, 22A.)
65. The Applicant's request for relief from the plaza requirement will not be detrimental to the public good or impair the intent of the Zoning Regulations. The elimination of the public plaza area will not negatively affect the community in light of the extensive green spaces proposed for the Buzzard Point area. The Property is one block from the future Oval Park location, which will provide a significant amount of green space for the community, and across the street from a future corner park. Furthermore, the Property is located several blocks north of the Anacostia River, which will include an ample amount of gathering spaces for the public. Additionally, the Project will include a streetscape in compliance with the Buzzard Point Streetscape Design Guidelines. (Ex. 2, 22A.)
66. Therefore, the Commission finds that the requested variance relief does not create substantial detriment to the public good and works in harmony with sound urban design principles and does not impair the intent, purpose, and integrity of the Zoning Regulations. The Project's reduction in full-sized parking spaces allows the Applicant to maximize the number of parking spaces on the Property in compliance with the intent of the Zoning Regulations, and any impacts on the community from the reduction of full-sized spaces will be mitigated by the Applicant's TDM plan. Additionally, the absence of a plaza will not have an adverse impact on the public good as there are extensive green and open spaces nearby to the Project. The Project will be built to meet the Buzzard

Point Streetscape Guidelines promulgated by OP and DDOT, evidencing compliance with the intent and purpose of the Zone Plan.

Special Exception Relief – Number of Parking Spaces

67. 11-K DCMR § 513.2(c) and 11-C DCMR § 701.5 require that the Property provide 0.5 parking spaces per 1,000 square feet of the Project in excess of 3,000 square feet, which number of spaces is subject to a 50% reduction since the Property is within one-half mile of a Metrorail station, yielding a required parking count of 20 spaces for the Project. (11-C DCMR § 702.1(a).) The Property provides eight surface parking spaces in total. (Ex. 9A.)
68. The Applicant requested special exception relief from 11-K DCMR § 513.2(c) and 11-C DCMR § 701.5 from the required number of parking spaces for a lodging use in the CG-4 zone.
69. In order to satisfy the standards for special exception relief for a reduction in number of required parking spaces, the Applicant must demonstrate that it satisfies the general special exception requirements of 11-X DCMR Chapter 9 as well as at least one of the following:
 - (a) Due to the physical constraints of the property, the required parking spaces cannot be provided either on the lot or within 600 feet of the lot in accordance with Subtitle C § 701.8;
 - (b) The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities;
 - (c) Land use or transportation characteristics of the neighborhood minimize the need for required parking spaces;
 - (d) Amount of traffic congestion existing of which the parking for the building or structure would reasonably be expected to create in the neighborhood;
 - (e) The nature of the use or structure or the number of residents, employees, guests, customers, or clients who would reasonably be expected to use the proposed building or structure at one time would generate demand for less parking than the minimum parking standards;
 - (f) All or a significant proportion of dwelling units are dedicated as affordable housing units;
 - (g) Quantity of existing public, commercial, or private parking, other than on-street parking, on the property or in the neighborhood, that can reasonably be expected to be available when the building or structure is in use; and

- (h) The property does not have access to an open public alley, resulting in the only means by which a motor vehicle could access the lot is from an improved public street and either:
 - (i) A curb cut permit for the property has been denied by the District Department of Transportation; or
 - (ii) Any driveway that could access an improved public street from the property would violate any regulation of this chapter, of the parking provisions of any other subtitle in the Zoning Regulations, or of Chapters 6 or 11 of Title 24 DCMR;
 - (A) The presence of healthy and mature canopy trees on or directly adjacent to the property; or
 - (B) The nature or location of a historic resource precludes the provision of parking spaces; or providing the required parking would result in significant architectural or structural difficulty in maintaining the integrity and appearance of the historic resource.

(11-C DCMR § 703.2 (a-j).)

70. The Applicant has demonstrated that due to the physical constraints of the property, the 20 required parking spaces cannot be provided either on the lot or within 600 feet of the lot. The Property is physically constrained due to its narrow depth of 81.5-86.5 feet, which is a lesser depth than other properties located in Square 656. Below-grade parking is equally challenging as the lot is not deep enough to provide efficient parking. The ramps, aisles, and core elements needed for access in a below grade garage on this narrow site will account for more than 50% of the garage area while eliminating the eight surface spaces. Additionally, due to the anticipated redevelopment of many of the lots surrounding the Project, the Applicant is unable to reliably assess nearby sites for location of potential additional off-site parking. (Ex. 2.) Therefore, the Commission finds that the Applicant is unable to provide the 20 required parking spaces either on the lot or within 600 feet of the lot.
71. The Applicant also provided evidence that the capacity of the commercial parking lots in the vicinity of the Project can accommodate the parking needs of the hotel. The Applicant signed a letter of intent with Colonial Parking, which has control over spaces in at least eight garages within one mile of the site. Many of the garages are office buildings, which have a peak parking demand during business hours, which complements the peak parking demand of the hotel use on weeknights and weekends. (Ex. 22A3, 25.)

72. Any reduction in the required number of parking spaces must be only for the amount that the Applicant is physically unable to provide and must be proportionate to the reduction in parking demand demonstrated by the Applicant under 11-C DCMR § 703.3. The Applicant is requesting a 12-space reduction in the required number of parking spaces, which is the amount the Applicant is physically unable to provide; to the extent additional spaces can be provided at the time of construction, the Applicant will provide them. The current Project design maximizes the amount of surface parking that can be provided on-site, while maintaining a functional floor plan for the hotel. The parking design maximizes the area of the Property by making the parking spaces accessible directly from the alley, alleviating the need for a drive aisle, which would require additional lot area, further reducing the footprint of the building. (Ex. 2.) Due to the reduced number of parking spaces, the Applicant will provide valet parking for restaurant and hotel guests off-site, reducing the on-site parking demand. (Ex. 22A, 25; Tr. at 29-30, 32, 38, 68, 86-87, 90.)
73. As the Applicant has designed the Project and surface parking spaces in a manner to maximize parking and maintain a functional floor plan, while being constrained by the narrowness of the Property and made arrangements for a robust valet parking plan, the Commission therefore finds that the Applicant's request for a reduction in the amount of parking spaces is only for the amount that the Applicant is physically unable to provide and is proportionate to the reduction in parking demand demonstrated by the Applicant.
74. Furthermore, any request for a reduction in the minimum required parking shall include a TDM plan approved by DDOT, the implementation of which shall be a condition of the Commission's approval under 11-C DCMR § 703.3. As discussed in Findings of Fact 89-95 below, the Applicant's TDM plan has been approved by DDOT and the implementation of the TDM is a condition of this Order.
75. In addition to the specific standards set forth in 11-C DCMR § 703, the Applicant's request for a special exception from minimum parking number requirements also meets the general special exception standards of 11-X DCMR Chapter 9, namely the requested reduction in number of parking spaces is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and that the requested reduction in number of parking spaces will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.
76. The reduction in number of parking spaces is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps because it will discourage auto-oriented uses by limiting the number of parking spaces, in furtherance of the Comprehensive Plan. Additionally, limiting the number of parking spaces enables the Project to utilize the narrow depth of the site for uses that will enhance the pedestrian experience, rather than for vehicle parking. (Ex. 2.)
77. The reduction in number of parking spaces will not have an adverse effect on the use of neighboring property because parking demand is expected to be low given the Project's

proposed hotel use. Additionally, as discussed in Findings of Fact 89-95 hereof, the requested reduction in spaces will be easily accommodated by off-site parking and the Applicant will implement a robust TDM plan as approved by DDOT to mitigate potential parking impacts of the Project.

Special Exception Relief – Penthouse Setback

78. In support of the District Department of Energy and the Environment’s (“DOEE”) solar initiatives, the Project includes solar panels on the roof. The solar panels are approximately three feet in height, and in order to maximize sustainable features of the Project, the Applicant proposes to place them atop approximately one foot of green roof. (Ex. 22A; Tr. at 20-21, 25-27.)
79. The solar panels meet the 1:1 penthouse front and rear setbacks and the 0.5:1 penthouse side setback on the west side of the Project required under 11-C DCMR § 1502.1(a-b, d). However, the solar panels on the east side of the Project encroach into the required side setback. Accordingly, the Applicant requested special exception relief from the penthouse side setback requirement. (Ex. 22A; Tr. at 15, 21, 26-27, 33-35.)
80. Special exception relief from the penthouse setback requirements pursuant to 11-C § 1504.1 must comply with certain specific conditions for relief. The Project satisfies these conditions for relief as follows:
 - (a) *The strict application of the requirements of Chapter 15 of Subtitle C would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes. (11-C DCMR § 1504.1(a).)*

The Applicant has demonstrated that the strict application of Chapter 15 of Subtitle C would be unduly restrictive, prohibitively costly, unreasonable, and inconsistent with Building Codes. The Project proposes solar panels approximately four feet in height that do not meet the required two-foot side setback on the east side of the Project. The encroachment into the required east side setback area is minimal at only approximately eight inches. While the Applicant could provide shorter solar panels that are three feet in height and would comply with the required side setback, the Applicant is providing the four-foot tall panels so that it can also provide approximately one foot of green roof underneath the panels, maximizing the rooftop space and sustainability elements. Requiring the solar panels to meet a 1:1 setback would either prevent the Applicant from providing both solar panels and green roof area or would reduce the amount of solar energy offered by the proposed solar configuration. The solar panels will be screened by the building’s parapet and will not be visible to adjacent properties. (Ex. 11, 11A, 22A; Tr. at 15, 21, 26-28, 33-35).

The Commission finds that requiring strict adherence to the penthouse side setback requirement would undermine the Applicant’s efforts to fulfill DOEE’s priority of

expanding the use of rooftop solar panels and the Applicant's effort to maximize green roof space and the number of solar panels and would therefore be unduly unreasonable;

- (b) *The relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall. (11-C DCMR § 1504.1(b).)*

The requested relief results in a better design of the Project, creating a rooftop that is well-designed, energy efficient, and Building Code-compliant. The proposed height and location of the solar panels results in the solar panels being shielded by the building parapet: there is no visible impact of providing the solar panels without the required side setback since they will be shielded around the perimeter of the building by the parapet. Without the requested setback relief, the energy efficiency of the Project would be reduced with no accompanying design improvement or reduction in visibility. (Ex. 11, 11A, 22A; Tr. at 15, 21, 26-28, 33-35). The Commission therefore finds that the relief requested results in a more efficient, appropriate penthouse design for the Project;

- (c) *The relief requested would result in a roof structure that is visually less intrusive. (11-C DCMR § 1504.1(c).)*

The proposed solar panel configuration will not be more visually intrusive than a configuration that strictly complies with penthouse side setback requirement. The encroachment into the required setback area is modest and the solar panels will be shielded by the four-foot building parapet and will not be visible from adjacent properties. (Ex. 11, 11A, 22A; Tr. at 15, 21, 26-28, 33-35.) As such, the Commission finds that there is no visual impact from providing the solar panels without the required side setback, yet there is a significant benefit to doing so for the energy efficiency of the Project;

- (d) *Operating difficulties, such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable. (11-C DCMR § 1504.1(d).)*

The narrowness of the Property presents an existing condition that makes full compliance with the required penthouse side setback restrictive and unreasonable for the solar panels. The modest depth of the Property necessitates a narrower building, which limits the amount of penthouse space available for solar panels. The proposed configuration of the solar panels, including the minor encroachment into the required side setback area allows the Applicant to maximize the number of solar panels and size of the green roof that can be provided in the narrow site, while still ensuring that the solar panels are not visually obtrusive. Requiring full compliance with the penthouse setback would needlessly reduce the amount of solar energy generated, while not meaningfully altering the building profile or visibility of the solar panels from adjacent properties. (Ex. 11, 11A, 22A; Tr. at

15, 21, 26-28, 33-35.) Therefore, the Commission finds that full compliance with the required side setback would be unreasonable;

- (e) *Every effort has been made for the housing of mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks. (11-C DCMR § 1504.1(e).)*

The Applicant has endeavored to design the rooftop to be in compliance with the required setbacks while maximizing the amount of green roof and solar panels. The solar panel's encroachment into the required side setback area does not increase the visibility of the rooftop structures. The additional penthouse mechanical equipment, such as the elevator overrun, is in full compliance with required setbacks. (Ex. 11, 11A, 22A; Tr. at 15, 21, 26-28, 33-35.) The Commission therefore finds that every effort has been made for the housing of mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks; and

- (f) *The intent and purpose of this chapter and this title shall not be materially impaired by the structure and the light and air of adjacent buildings shall not be affected adversely.*

The Project includes relief that is in line with the intent and purpose of 11-C DCMR Chapter 15. The height of the solar panels is equal in height to the four-foot parapet and the solar panels will not be visible from adjacent properties; therefore, they will not impair the light and air of adjacent properties. (Ex. 11, 11A, 22A; Tr. at 15, 21, 26-28, 33-35.)

81. In addition to satisfying the foregoing conditions for special exception relief of 11-C DCMR §1504.1(a-e), the requested relief must comply with the general special exception requirements of 11-X DCMR § 901.2, namely that the requested relief will be in harmony with the intent and purpose of the Zoning Regulations and Zoning Maps and will not tend to adversely affect the use of neighboring properties.
82. The requested special exception relief from the penthouse side setback requirements complies with these two additional standards. Allowing a roof structure not in strict compliance with the penthouse setback requirements will enable the Applicant to promote energy efficiency in line with DOEE priorities, while still minimizing the visibility of the solar panels, which will be shielded from view by the building parapet. The encroachment into the side setback area is modest, and the rest of the penthouse structures comply with the penthouse setback requirements of the Zoning Regulations. The solar panels will be shielded by the building parapet and therefore will not tend to adversely affect the use of neighboring properties. (Ex. 11, 11A, 22A; Tr. at 15, 21, 26-28, 33-35.) In light of the above, the Commission finds that the requested relief from the required penthouse side setback does not adversely affect the neighboring properties and is in harmony with the Zoning Regulations and Maps.

Agency Reports

Office of Planning

83. The OP Report recommended approval of the Project pending provision of certain additional information. Specifically, OP requested detailed information regarding the guest valet parking plan, including any agreements for off-site parking, and for provision of a color and materials board. (Ex. 13.)
84. The Applicant provided a color and materials board and testimony regarding the building materials at the Public Hearing in response to OP's request. (Tr. at 22-24, 30-32, 48-49.)
85. The Applicant provided a letter of intent with Colonial Parking dated as of November 16, 2018 concerning valet parking management and testimony regarding the valet parking plan at the Public Hearing in response to OP's request. (Ex. 25; Tr. at 30, 37-39, 67-68.)
86. At the Public Hearing, OP noted that its comments had been satisfied and recommended approval of the Project based on the record. (Tr. at 64.)
87. The Commission finds that the OP Report and testimony was thorough and credible in considering the application and further finds that the Applicant satisfactorily addressed all of OP's comments and requests.
88. OP testified at the hearing that it had received comments from DOEE. DOEE noted its support for the Project, including its LEED level of certification and its use of solar panels. DOEE indicated that it had met with the Applicant to review the sustainable design of the Project and found it to be appropriate. (Tr. at 64-66.)

District Department of Transportation

89. DDOT's review included an assessment of the potential safety and capacity impacts of the Project on the District's transportation network and to propose mitigations that are commensurate with the action. DDOT undertook an extensive, multi-administration review of the case materials and found that the site plan is generally consistent with DDOT standards including access to vehicle parking, loading, and long-term bicycle parking; truck maneuvers accessing the proposed loading berths; and the proposal to widen Q Street by four feet. (Ex. 14.)
90. DDOT's analysis determined that the assumed non-auto modes splits are achievable if supported by a commensurate Transportation Demand Management plan. Accordingly, the DDOT Report was supportive of the Project, subject to the following conditions being included in the zoning order: (Ex. 14, 22A3; Tr. at 25, 29, 65-66.)
 - (a) Implement the following physical improvements:
 - (i) Shift the north curblineline of Q Street, S.W. northward by four feet in order to provide sufficient cartpath to accommodate the operational needs of Q Street. The Applicant agreed to this condition at the Public Hearing; and (Ex. 14, 22A3.)

- (ii) Mitigate impacts at the South Capitol Street/P Street intersection by installing separate eastbound left and right turn lanes subject to approval at DDOT permitting. The Applicant agreed to this condition at the Public Hearing; (Ex. 14, 22A3.)
 - (b) Implement the Transportation Demand Management (“TDM”) Plan as proposed by the Applicant in the CTR for the life of the project, unless otherwise noted, with the following revisions: (Ex. 9.)
 - (i) Ensure that the display is an electronic display with real-time transit and other transportation alternative information. The Applicant agreed to this condition at the Public Hearing; and (Ex. 14, 22A3.)
 - (ii) Specify a minimum number of D.C. Circulator day passes to be provided. At the Public Hearing, the Applicant agreed to provide SmarTrip cards and replenish the cards based on guest demand since D.C. Circulator day passes have been discontinued; (Ex. 14; 22A3.)
 - (c) Ensure that the number of showers and lockers and their sizes comply with Zoning. Showers and lockers should be available to both hotel and retail employees. At the Public Hearing, the Applicant agreed to meet the minimum shower and locker requirements as required by the Zoning Regulations; (Ex. 14, 22A3.)
 - (d) Add a new TDM measure to inform prospective guests about parking and alternate modes of transportation as part of the pre-reservation and reservation process through check-in. The Applicant agreed to this condition at the Public Hearing; (Ex. 14, 22A3.)
 - (e) Add a new TDM measure to charge employees a daily rate of at least the average parking costs within one-half mile of the site in order to discourage employees from driving to the site. The Applicant agreed to this condition at the Public Hearing; and (Ex. 14, 22A3.)
 - (f) Staff the valet such that there is no vehicle double parking on Q Street that would affect vehicle operations. The final staffing plan will be determined as part of the future public space permit. The Applicant agreed to this condition at the Public Hearing. (Ex. 14, 22A3.)
91. In addition to the foregoing conditions, the DDOT Report requested that the preliminary public space plans submitted by the Applicant be revised to more clearly denote the sidewalk and tree box dimensions and that the inner edge of the sidewalk on Q Street at the north-south alley should be maintained without a jog to facilitate future sidewalk alignment. (Ex. 14.) At the Public Hearing, the Applicant provided revised public space

plans with clear dimensions and Mr. Alinger testified that the requested sidewalk adjustment would be made. (Ex. 22A2; Tr. at 24-26.)

92. DDOT analyzed the Applicant's parking plan to determine if eight spaces would be sufficient to meet the hotel's needs. It noted that the spaces are intended for employee parking and that the Applicant provided employee parking rates for other hotels in the District, which results in an estimated demand for seven spaces; accordingly, eight spaces are sufficient. DDOT further noted that additional parking spaces are likely to be needed to accommodate hotel guests who arrive by personal vehicle, which would occur by valet. The hotel would work with Colonial Parking to park the valet vehicles in garages within one mile of the Property. (Ex. 14.)
93. In order to support the Applicant's request for parking relief, DDOT required a curbside parking inventory and occupancy study. The parking inventory identified a maximum of approximately 111 curbside parking spaces within the immediate vicinity of the site, 95 of which are designated as some form of resident permit parking and not available for hotel guest parking. The parking occupancy study identified an overall occupancy rate of between 31%-44% during the peak period in the PM. The requested parking relief would not have an adverse impact on the neighboring properties and to the extent it did, those impacts could be mitigated through the adoption of the above TDM measures. (Ex. 14.)
94. At the Public Hearing, DDOT noted that its comments had been satisfied and recommended approval of the Project based on the record. (Tr. at 65-66.)
95. The Commission finds that the DDOT Report and testimony was thorough and credible in considering the Application and further finds that the Applicant directly and satisfactorily addressed all of DDOT's comments and requests.

ANC Report

96. In its report dated November 27, 2018, ANC 6D noted that its support of the Project is stipulated upon: (a) the Applicant providing a Construction Management Plan to ANC 6D prior to the final Order, (b) the Applicant completing and signing a Neighbor Agreement with ANC 6D, (c) the Applicant completing a Construction Dust and Management Plan, in collaboration with the developers of 1530 1st Street, S.W. and 1550 1st Street, S.W., 60 days prior to the start of construction of the Project, and (d) the Applicant assembling a team of transportation consultants and experts to address and manage transportation and parking concerns for at least six months following the opening of the Project. (Ex. 20.)
97. At the Public Hearing, the Applicant confirmed its commitment to meet each of the foregoing stipulations. (Tr. at 15-16, 56-58, 77-78.)
98. The Applicant and ANC 6D signed a Neighbor Agreement dated as of November 26, 2018. (Ex. 20A.)

99. At the Public Hearing, ANC 6D06 Commissioner Rhonda Hamilton commended the Applicant’s efforts to work in good faith with ANC 6D. She also testified to the concerns she had heard from the community with respect to the Project and development generally. She noted that the primary issues she heard concerned environmental impacts of construction and the requested parking relief. As such, she focused the conditions of support on addressing these concerns. More specifically, the Neighbor Agreement requires environmental impact mitigation measures during demolition of the existing improvements on the Property and construction of the Project, including: a commitment to abide by all DOEE requirements and regulations with respect to the removal of hazardous materials during demolition, to the extent any exist, and making commercially reasonable efforts to minimize any negative environmental impacts to the residents of ANC SMD 6D06 including the provision of air filters to residents upon request and/or conducting regular on-site air monitoring and sharing the results with the ANC during demolition; and during construction, to put in place air quality monitoring measures recommended by third party air quality expert and to provide further mitigations in a construction dust and management plan. Finally, the Neighbor Agreement requires an assessment of transportation impacts for six months after the opening of the hotel. (Ex. 20; Tr. at 70-77, 84-85.)
100. The Applicant submitted a copy of the Construction Management Plan as requested in the ANC Report. (Ex. 20, 29C; Tr. at 36.)
101. The Commission finds that ANC 6D’s report and testimony were thorough, credible and helpful in considering the Application and accordingly gives such testimony the great weight entitled.

Persons in Opposition

102. At the Public Hearing, Andrew Cho, owner of 1525 1st Street, S.W., and James R. Harris Jr., owner of 1529 1st Street, S.W., each testified in opposition to the request for relief from the number of parking spaces, but both noted general support for the Project and the jobs it would bring. (Tr. at 79-84.)
103. Several nearby residents, the McClains, filed a request for party status outlining a number of concerns, but the failure of the McClains or their counsel to appear at the Public Hearing, as required, resulted in this request for party status deemed withdrawn, as established by 11-Z DCMR § 404.11. Nonetheless, the Commission considered the comments submitted by the McClains in the request for party status that was deemed withdrawn. The McClains indicated general environmental concerns due to the exhaust from additional vehicles on the roadways, poor soil and air quality of the area, and the presence of “toxic” dust. The McClains also noted a need to delineate pedestrian and vehicular spaces and a concern for “noise pollution” and lack of street parking. The submission provided by the McClains does not elaborate on any of these concerns and does not tie them specifically to the Project. In fact, according to the McClains’ submission, these concerns are admittedly existing conditions. The McClains did not

attend the hearing to elaborate on their concerns or to allow the Commission to question the source of these concerns and their relationship to the Project. (Ex. 12.)

104. In response to parking concerns, Ms. Milanovich testified that the number of parking spaces for which relief is requested is only 12 spaces, and that there are significantly more than 12 parking spaces available nearby to the Property. Ms. Milanovich also noted that demand for parking for hotel use is highest overnight, which is the precise time that the parking facilities nearby to the Property identified in Applicant’s letter of intent with Colonial Parking (“Valet Sites”) dated as of November 16, 2018 are underutilized. (Ex. 25; Tr. at 86-87.)
105. The Applicant also testified as to measures it plans to take to discourage employees from driving to the Property, including charging employees for valet services, and measures it plans to take to discourage hotel guests and restaurant customers from avoiding the valet and parking on the streets surrounding the Property, including hiring private towing companies to remove such vehicles. (Tr. at 29-30, 32, 37-38.)
106. At the Public Hearing, Mr. Rogers stated that taking into account existing parking agreements and commitments for other developments in the Buzzard Point area to utilize the Valet Sites, the balance of spaces at the Valet Sites is more than sufficient to accommodate a need for 12 parking spaces, which is the deficit in the number of parking spaces required for the Project and the amount of parking spaces for which the Applicant is seeking relief. Mr. Rogers agreed with the Applicant’s expert that the parking needs complement the parking needs of nearby office buildings: the peak demand of a hotel is at night and on weekends, while the peak parking demand for office buildings is during business hours; accordingly, one garage can suitably accommodate the needs of both uses. (Tr. at 67-68.)
107. In response to concerns raised at the Public Hearing, the Applicant submitted a letter, dated December 10, 2018, supported by plans depicting two alternatives, which illustrated that underground parking under either scenario would have only a limited impact in reducing the requested parking relief (relief needed for three spaces instead of the requested 12 spaces) and would have a significant negative impact on the Project by removing approximately 3,000 square feet of ground-floor amenity space. (Ex. 29, 29E.)
108. The Commission has considered the responses to stated parking concerns provided by the Applicant and Ms. Milanovich at the Public Hearing, as well as the CTR and the Applicant’s Post-Hearing Submission, and finds that the Applicant has satisfactorily responded to these concerns. (Ex. 9, 9A, 29, 29E.) The amount of parking relief that the Applicant is seeking is limited to 12 parking spaces and the Valet Sites have ample capacity to accommodate such parking. The Applicant has committed to implement its robust TDM plan, which DDOT has approved as satisfactory to mitigate any transportation impacts of the Project.

109. The Commission considered the potential environmental impacts of the Project, the testimony provided by Mr. Babcock on the sustainability initiatives included in the Project, DOEE's comments as conveyed by OP, and the mitigation measures requested by the ANC and agreed to by the Applicant. Based on this testimony, the Commission determined that the Project will exceed District environmental requirements, and so benefits the community in a manner superior to that of a matter-of-right development on the site, as required by the design review criteria.

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 § 603.1, the application also sought a variance from the parking space size requirements of 11-C DCMR § 712.3 and 11-K DCMR § 513.2(c); a variance from the plaza requirements of 11-K § 5014.13; a special exception from the parking requirements of 11-C DCMR § 701.5 and 11-K DCMR § 513.2; and a special exception from the penthouse setback requirements of 11-C DCMR § 1504.1.
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 properly and timely 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 and related areas of flexibility and relief.
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 or 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. The Commission notes that both the OP report and the Applicant's submission addressed compliance with each of these factors in detail and no competing policies were specified by any individual or party.
5. The Commission also reviewed the Project against the CG design review criteria of 11-K DCMR §§ 500 and 512.3 for general CG projects, and based on the findings set forth, specifically the evidence provided by the Applicant and its experts, reports, and testimony provided by OP and DDOT, as well as statements submitted by DOEE to OP, the Commission concludes that the Project satisfies such criteria as well. The Project helps achieve the goals and objectives of the CG zones. More specifically, the Project helps achieve the desired use mix, including hospitality and restaurant 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 by utilizing the existing alley system. Further, the Project will widen Q Street by four feet, as requested by DDOT in its report, to enhance traffic circulation. (Ex. 14.) The Project's façade is highly articulated and the Project minimizes its impact on the environment, including through Silver certification under LEED v.4.

6. Pursuant to 11-X DCMR §§ 512.7 and 603.1, the Commission carefully considered the Applicant's request for variance relief from the parking space size requirements and the plaza requirements. As demonstrated in the facts above, both OP and the Applicant included sufficient justification for both areas of relief into the record through written submissions and through testimony and no evidence was proffered to dispute the necessity or impact of such relief.
7. Pursuant to 11-X DCMR §§ 512.7 and 603.1, the Commission carefully considered the Applicant's request for special exception relief from the number of parking spaces required and the setback required for the solar panels. Again, as demonstrated by the facts above, both OP and the Applicant included sufficient justification for both areas of relief into the record through their written submissions and testimony to support the requested relief. No evidence was proffered to dispute the necessity or impact of the rooftop setback relief for the solar panels.
8. Neighbors to the Project provided testimony indicating that the relief from the number of parking spaces would have an adverse impact on the community. They provided anecdotal evidence of existing congestion and lack of parking. The Commission has seriously considered their concerns regarding the lack of parking in the community. The Commission notes that DDOT required a curbside parking inventory and occupancy study in connection with the request for parking relief. The analysis identified an overall occupancy rate of between 31% and 44% during the peak period in the PM. Nevertheless, the Commission accepts that the community finds there to be a lack of parking in the neighborhood, particularly on days when baseball games or soccer games are held in the nearby stadiums. Taking the testimony as true, without further supporting evidence, the Commission finds that the Applicant must implement mitigation measures to offset the impact its request for relief will have on the community. The Commission relies on the analysis provided by DDOT that the Applicant's TDM measures will mitigate the impact of the parking relief and will play a role in achieving the desired and expected mode split. The Commission finds that the required TDM measures will encourage hotel guests and visitors to utilize alternative means of transportation, reducing the need for on-site parking. To the extent visitors and guests drive to the hotel, the Commission finds that the provision of valet services that utilize garage spaces in nearby underutilized garages is a satisfactory way to address the hotel's parking needs. The Commission notes that this approach allows a use such as a hotel, which has its highest parking demands in the evening and on weekends complements the parking needs of nearby office buildings, which experience their peak demand during business hours. This is an appropriate approach to satisfying the parking needs of the hotel by using existing resources and avoiding compromising the hotel program by requiring parking on-site. The Commission is satisfied based on evidence from DDOT and the Applicant's expert that the TDM

measures will provide sufficient mitigation of any impact from the request for parking relief.

9. The Commission accepts the Applicant's analysis confirming that the eight spaces provided on site are sufficient to meet the parking demands of the hotel's employees. No testimony or evidence was provided to dispute this analysis.
10. Although the request for party status by the McClains was deemed withdrawn pursuant to 11-Z DCMR § 404.11 due to their failure to appear, as required, at the Public Hearing, the Commission nevertheless considered the anecdotal evidence provided in the party status request and found that each concern raised by the McClains was addressed sufficiently by the Applicant. The McClains raised concerns with the request for parking relief and the potential increase of area traffic, which the Commission has addressed in Conclusions of Law paragraphs 8-9. Further, the Commission takes note that the Applicant has agreed with the ANC's request to monitor the effectiveness of its transportation proposal on a monthly basis and to provide a report to the ANC for the first six months of operation of the hotel. The Applicant will engage its transportation expert to address those transportation issues that do arise. The Commission believes that these efforts sufficiently address the McClains' traffic and parking concerns.
11. The Applicant addressed each of the remaining concerns of the McClains, including:
 - (a) Mitigation of environmental concerns during construction, including dust and air quality: The McClains submitted written testimony indicating existing environmental concerns, but did not show up to the hearing to elaborate on the environmental impacts of the Project. The Commission first notes that the standard of review of environmental impacts is to evaluate the Project against LEED certification standards, which the Applicant did in detail through testimony of its expert witness, Mr. Babcock. Nevertheless, the ANC undertook specific steps to address the environmental concerns voiced by community members. The ANC and the Applicant entered into a Neighborhood Agreement that specifically addresses environmental concerns of the community during demolition of the existing structures on the Property. Included in that agreement, the Applicant agreed to comply with all District requirements and regulations with respect to the removal of hazardous materials, to the extent any exist, and to make commercially reasonable efforts to minimize any negative impacts on residents, including the provision of air filters to residents upon request. The agreement also addresses environmental concerns during construction and provides for collaboration between the Applicant and developers of the neighboring site to monitor air quality throughout the duration of construction. The Applicant further agreed to complete a Construction and Dust Management Plan in collaboration with the developers at 1530 and 1550 1st Street, S.W. that provides for air quality monitoring. The Commission gives great weight to the ANC's input on this matter and finds that its approach to addressing community environmental concerns, including those noted by the McClains in their withdrawn party status

submission, is appropriate and sufficiently mitigates any such impacts of the development;

- (b) Pedestrian and vehicular delineation: The McClains made a vague reference to being impacted by the request for relief that calls for the separation of pedestrian and vehicular traffic. Since the McClains were not at the hearing, the Commission was not able to ask them to clarify their concerns. Nevertheless, the Commission finds the proposed circulation plan appropriate. It believes the pedestrian realm is greatly improved with a streetscape that complies with the Buzzard Point Vision Framework guidelines. It also finds use of the existing alley system an appropriate approach to minimize conflicts between pedestrian and vehicular traffic. Finally, the Commission finds that moving the curblin four feet into the Property, as requested by DDOT, will enhance traffic flow and mitigate any potential traffic impact by the Project; and
 - (c) Noise pollution: The McClains made a vague reference to being impacted by the noise pollution of the project. Again, since the McClains did not attend the hearing, the Commission was not able to ask them to clarify as to the source of the noise pollution and their cause for concern. Nevertheless, the Commission heard testimony from the Applicant that they “are not in the nightclub business” and do not intend to have loud, disruptive events on the 9th story terrace. This testimony was based on the Applicant’s operation of other hotels and their hospitality experience. As such, the Commission is persuaded that the project will not have an adverse impact on neighboring properties due to noise.
12. The Commission concludes that the Applicant satisfied all the necessary elements for design review as well as for the variance and special exception relief requested.
 13. The Commission concludes that the Applicant responded to the concerns raised by the ANC, OP, DDOT, and DOEE regarding the Project, and notes that the ANC and all three agencies recommend approval of the Project. The ANC was the only party to the case, and it spoke in support of the Project. No party spoke or submitted materials in opposition to the Project. Accordingly, a decision by the Commission to grant this application would not be adverse to any party.
 14. 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 November 19, 2018, ANC 6D, the ANC within which the Property is located, voted 5-0-1 to support the application for design review and related special exception and variance relief with stipulations. The Commission notes that the ANC conditioned its support on the provision of a construction management plan, the provision of a Neighbor Agreement with ANC 6D, the provision of a Construction and Dust Management Plan, generated in collaboration with the developers of the projects located at 1530 and 1550 1st Streets, S.W. and finally, a commitment to assemble a team of transportation consultants and experts to address and manage the egress, transportation issues, and parking concerns

relating to hotel operations for at least six months after the opening of the hotel. The Applicant agreed to each condition.

15. 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 a report and testimony in support of the application. OP requested additional information regarding the valet operation and the proposed materials for the Project. The Applicant provided the requested information at the hearing and OP did not voice any objections to the responses and, in fact, testified in support of the application. 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.
16. The Commission has considered DDOT's report and recommendation. The Commission finds DDOT is a subject matter expert and as such, it carefully considers the recommendations of the agency and acknowledges that it recommended approval of the application with proposed revisions to the TDM, to which the Applicant agreed. The Commission concludes that the Applicant appropriately addressed concerns raised in DDOT's report.
17. The Commission considered testimony provided at the hearing from OP and the Applicant confirming that DOEE was consulted during the planning of the Project and supported the design review application, including certification at the LEED-Silver BD+C v. 4: New Construction level. The Commission also considered the testimony of the Applicant's expert, Mr. Babcock, and finds that sufficient evidence was provided to ensure that the Project would minimize its impact on the environment, as evaluated against LEED certification standards.
18. Accordingly, the Commission, having given great weight to the ANC's concerns and the OP Report and having considered all relevant facts and materials in the record, concludes that the design of the Project satisfies the requirements of the Zoning Regulations applicable to the design review of the Project and the variance relief requested.
19. The Project will promote the continued development of CG into a vibrant mixed-use neighborhood, is sensitive to the site's location within an existing community, 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.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Case Number 18-15 for design review, including **APPROVAL** of variance and special exception 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 dated September 5, 2018, and marked as Exhibits 2E1 and 2E2 of the record, as modified by the drawings submitted as Exhibits 11A1-11A4 and 29D-29E2 (together, the “Plans”), and as modified by the guidelines, conditions, and standards herein.
2. The Project will have relief from the required number of parking spaces, the size of the parking spaces, the plaza area, and the setback of the solar panels.
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, atria, 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 hotel rooms plus or minus five rooms provided no additional parking relief is required;
 - (c) To vary the final selection of the color of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Plans;
 - (d) To make minor refinements to the locations and dimensions of exterior details that do not substantially change the external design shown on the Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
 - (e) To continue coordination of the streetscape design and areas in public space with DDOT during the public space process; and
 - (f) To modify the rooftop plan to incorporate additional solar panels so long as they are shielded from view by the parapet.
4. **Transportation Measures.** Prior to the issuance of a 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) Shift the north curblineline of the portion of Q Street, S.W. that abuts the Property northward by four feet;
 - (b) Install separate eastbound left and right turn lanes on P Street, S.W. at its intersection with South Capitol Street subject to approval at DDOT permitting;
 - (c) Provide an electronic display in the lobby of the building with real-time transit and other alternative transportation information, including public transit information such as nearby Metrorail stations and schedules, Metrobus stops and

schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the number of bicycles available at each location;

- (d) Provide a Capital Bikeshare station adjacent to the site or at a nearby location, subject to DDOT approval. The Capital Bikeshare station will be a 19-dock station and will include one year's operating expenses;
 - (e) Make SmarTrip cards available to hotel guests for use on the D.C. Circulator and replenish based on demand;
 - (f) Provide required locker room and showers for use by employees;
 - (g) Inform prospective guests about parking and alternative modes of transportation as part of the pre-reservation and reservation process through check-in;
 - (h) Charge employees a daily rate of at least the average parking costs within one-half mile of the site;
 - (i) Staff the valet such that there is no vehicle double-parked on Q Street. The staffing plan will be finalized as part of the public space permit; and
 - (j) Provide at least one 240-volt electric car charging station.
5. **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-Silver status. Within 12 months after the issuance of the Certificate of Occupancy for the building, the Applicant shall provide evidence that it has secured Silver Certification or higher from the U.S. Green Building Council under the LEED-BD+C v.4: New Construction rating system.
6. **Solar.** The Applicant shall dedicate rooftop space for solar panels as depicted in the plans submitted as Exhibit 29E, and modified by the flexibility permitted in Decision Paragraph 3(e).
7. **Community Commitments.** The Applicant agrees to the following:
- (a) To comply with the terms of the construction management plan submitted into the record as Exhibit 29C;
 - (b) To comply with the terms of the Neighbor Agreement with ANC 6D submitted into the record as Exhibit 20A; and
 - (c) For the first six months of the hotel's operation, the Applicant shall provide monthly updates to the ANC regarding community concerns about traffic circulation, congestion, and parking and engage its transportation consultant to address those concerns.

8. 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.)
9. 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 December 17, 2018, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter A. Shapiro, not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on March 1, 2019.

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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