GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLOMBIA
ZONING COMMISSION ORDER NO. 10-21
Z.C Case No. 10-21
Buzzards Point, LLC
(Capitol Gateway Overlay Review)
June 27, 2011

Pursuant to notice, the Zoning Commission for the District of Colombia (the "Commission") held a public hearing on May 26, 2011, to consider an application for property owned by Buzzards Point, LLC (the "Applicant") for review and approval of a new development ("Marina Place") pursuant to the Capitol Gateway (CG) Overlay District provisions ("CG Overlay District Review") set forth in §1610 of the D.C. Zoning Regulations (the "Zoning Regulations"), Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The property that is the subject of this application consists of Lots 4, 5, 6, and 804 in Square 667S (the "Property").

In addition to the approval requested pursuant to § 1610.2, the Applicant also requested variance relief from §§ 2203.2 and 2204.2 for loading requirements, special exception relief from § 930.3(b) regarding the setback requirement of the roof structure and § 411.5 regarding the uniform height of the roof structure, and Commission flexibility for extra height and floor area ratio ("FAR") in accordance with § 1603.4.

The Commission considered the application pursuant to Chapter 30 of the Zoning Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

PROCEDURAL HISTORY

1. This application was originally scheduled for a public hearing on January 21, 2011, but the hearing was cancelled due to inclement weather.

2. After proper notice was provided, the Applicant presented its design and application for Marina Place to the Commission on May 26, 2011.

3. The witnesses for the Applicant at the public hearing included Brian Buczkowski from the firm Eric Colbert & Associates, PC. Mr. Buczkowski was the project's lead architect and was admitted as an expert in that regard. Two other witnesses, with expertise in architecture and floodplain development, were admitted as experts but did not testify.

4. The witnesses providing testimony for Advisory Neighborhood Commission ("ANC") 6D were Ron McBee and Roger Moffatt, who both urged the Commission to approve the project and noted that the ANC had unanimously voted in support of the project.

5. At the conclusion of the hearing, the Commission requested that the Applicant consider revising its design and application for Marina Place to include the following: (i) a revised LEED checklist indicating the Applicant's efforts to design Marina Place such that it may qualify for LEED certification and in particular, Silver LEED certification; (ii) a communal roof area for general access by building residents; and (iii) additional renderings illustrating how the building's materials and surfaces would interact. The Applicant submitted these materials to the Commission on June 16, 2011.

DESCRIPTION OF PROPERTY AND SURROUNDING AREA

6. The Property is located on the south side of V Street, S.W. between Half Street and 1st Streets, on a site consisting of Lots 4, 5, 6, and 804 in Square 0667S in the neighborhood known as Buzzard Point. The area is currently used as trailer storage for boats at the marina next door. The Property is bounded on the south by the Buzzard Point Marina, a National Park Service ("NPS") property. The Coast Guard Headquarters is located across 1st Street to the west in an eight-story building. A Pepco power generation facility is located across V Street to the north. The wider neighborhood is characterized by industrial uses, though the zoning allows high-density mixed use. Ft. McNair is located along the western edge of Buzzard Point. It is zoned CG/W-2.

PROJECT OVERVIEW

7. The Applicant is seeking Commission design review approval pursuant to 11 DCMR Chapter 16, the Capitol Gateway Overlay District in order to construct a mixed-use building consisting of mostly residential space with an area of ground floor retail. No rezoning approval is requested. The main entrance to the residential part of the building would be located on V Street. Entrances to five two-story "row house" units would also be on V Street. The 97 proposed units range from one-bedrooms to two-bedrooms, and the application requests flexibility to vary the total number of units between 75 and 110. The entrance to the approximately 1,800 square foot retail area is proposed for 1st Street.

8. The shape of the building takes advantage of the unusually shaped lot. A semi-circular footprint utilizes the wider, western portion of the lot. A narrow wing extends to the east toward Half Street. The ground floor of the building would have a retail space at the corner of 1st and V Streets. The remainder of the ground floor would be dedicated to the residential use, including lobby space, amenity space, a trash and loading area, and residential units. The rowhouse units along V Street would have direct access from the street, and most ground floor units would have outdoor terraces. The ground floor would

also include a ramp to below grade parking and a loading bay. The design combines the parking and loading access into one curb cut on 1st Street. The southern property line, adjacent to the NPS property, would be marked by a masonry wall.

9. On upper floors all units are accessed from an interior hallway, and many have balconies. Units on the eighth floor have access to the roof and private rooftop decks. There is also a designated public rooftop terrace for residents without private rooftop desks. The roof also meets the LEED requirements for a green roof.

10. A multicolor combination of brick and metal panels and trim provides Marina Place with a vibrant aesthetic character and depth. Each unit includes a balcony, terrace, or roof deck, which allows residents to better experience the surrounding community and context. These balconies also provide strong visual accents against the building's large glass windows.

11. The Applicant has submitted a LEED checklist, as required by § 1610.3(f) of the CG Overlay. The checklist indicates that the design will achieve a minimum of 52 points and could possibly achieve eight additional points.

12. In addition to flexibility noted above regarding the number of units, the applicant is also requesting the flexibility to: (i) vary the location and design of all interior components provided that the variations do not change the exterior configuration of the building; (ii) vary the final selection of the exterior materials within the color ranges and material types proposed provided that there is no overall reduction in quality; (iii) make minor refinements to exterior material, details and dimensions, to comply with the District of Colombia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals; (iv) add a third level of parking in the event the District Department of Transportation ("DDOT") does not grant access to allow vault parking areas; (v) vary the number of parking space in a uniform manner consistent with any unit count changes; (vi) adjust the placement of windows, balconies, balcony railings, and privacy screens as necessary based upon the final unit count and layout of demising walls, so long as the adjustments do not materially change the exterior appearance of the building; (vii) allow for awnings and/or signage for retail space; (viii) exceed by not more than two percent the percentage of lot occupancy or gross are of the project; and (ix) that this order approving Marina Place be valid for three years from the date of the order.

REVIEW APPROVAL OF NEW DEVELOPMENT REQUIRED BY CG OVERLAY

13. The CG Overlay regulations identify specific standards and objectives for new development within the CG Overlay. Section 1610.2 requires the Applicant to demonstrate that the proposed project will meet the standards and objectives set forth below.

14. Pursuant to § 1610.3(a), the Applicant is required to prove that the project will achieve the objectives of the CG Overlay as set forth in § 1600.2. The Applicant, in its written statement and testimony at the public hearing, noted that Marina Place will provide the first residential development on Buzzard Point as well as a smaller retail component consistent with the overlay's goal of establishing "a mixture of residential and commercial uses". Compared to the current neighboring commercial buildings also zoned CG/W-2, Marina Place will not only be set back further from the Anacostia River, it will also have lower lot occupancy, height, and density. It also complies with the height and bulk standards set forth in the CG/W-2 zone which were designed to ensure reduced heights and bulk of buildings along the waterfront. Marina Place also transcends the area's standard block rectangular construction and offers a fresh look especially to visitors who approach by or along the river. Its curvilinear design facilitates views around the building to the waterfront. Marina Place will offer a retail shop on the first floor for convenient use by visitors to the area and the marina.

15. In accordance with § 1610.3(b) the Marina Place will help achieve the desired mix of uses in the CG Overlay as set forth in § 1600.2(a) and (b). Marina Place will represent the first mixed-use project in Buzzard Point which currently has no residential buildings and minimal public retail.

16. Pursuant to § 1610.3(c), the proposed building must be in context with the surrounding neighborhood and street patterns. Marina Place is the first application and development project in Buzzard Point under the CG regulations. All existing private development in the area was completed over 30 years ago under different zoning guidelines that allowed for more density, height, and closer proximity to the Anacostia River. Marina Place will fit well into what will be a new phase for Buzzard Point under the CG vision. The building will not change or disrupt current street patterns and will actually help to better define Half Street which currently has the appearance of being part of the marina's parking lot.

17. Satisfaction of § 1610.3(d) requires that the proposed building minimize conflict between vehicles and pedestrians. The building design includes wide sidewalks that are separated from the adjacent streets with planting areas. This will serve as an aesthetic barrier between pedestrians and vehicles.

18. In accordance with § 1610.3(e), the proposed building needs to minimize unarticulated blank walls adjacent to public spaces through façade articulation. The design for Marina Place contains no "unarticulated blank walls". Special consideration has been given to the façade facing the marina and Anacostia River. This south facing façade is not uniform or flat and will instead be comprised of large glass windows accentuated by balconies.

19. Section 1610.3(f) requires that the proposed building will minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards. Marina Place has been designed to qualify for LEED Silver certification. The Applicant has submitted a LEED checklist that indicates that Marina Place will achieve a minimum of 52 points and could possibly achieve eight additional points. The Certified LEED level would be achieved at 40 points, and Silver at 50.

20. In accordance with § 1610.4(a), the building or structure shall provide suitably designed public open space along the waterfront. The Property is not immediately adjacent to the waterfront and the adjacent NPS marina provides the desired public open space. However, the project will be set back from its southernmost property line nearest the waterfront offering a further visual buffer for pedestrians approaching along the river.

21. Section 1610.4(b) requires that a plan shall be included in the application for suitable open space treatment of the setback area for such uses as walkway and bikeway, passive or active recreational use, and including provisions assuring private maintenance of the space, convenient and permanent public access to the space, and suitable connections to adjacent public space along the waterfront. Marina Place will include pedestrian friendly sidewalks on the west, north, and east sides of the building. Only the south side of the Property bordering the NPS land will not have a public pedestrian area. This is consistent with the NPS request that pedestrian access between the properties be minimized.

22. Pursuant to § 1610.4(c), the application shall include a view analysis that assesses openness of waterfront views and vistas, and views and vistas toward the Capitol Dome, other federal monumental buildings, existing neighborhoods, South Capitol Street, and the Frederick Douglass Bridge. The curvilinear shape of the project maximizes views around the project to the waterfront. The existing Pepco Power Station already blocks views from the water and surrounding areas towards notable monuments such as the Capital Dome and Frederick Douglass Bridge. Pedestrians will have wide view corridors approaching the water from both 1st and V Streets. This is particularly true for 1st Street, which slopes downwards to provide water views from several hundred yards away. The moderate height of the project, in full compliance with CG Overlay standards, also facilitates views and vistas towards the waterfront, the Capitol Dome, other monumental buildings and nearby neighborhoods. The Applicant has included several photographs in

the Commission Design Submittal Set (Page C-5), which approximate the various views expected from Marina Place. These photographs were taken from the next-door building (2100 2nd Street, S.W.) at an estimated 75 feet from the Property and a height of approximately 90 feet. The photographs were taken from the edge of the roof closest to the Property, and in some cases have been magnified to better illustrate the exact view Marina Place will have at the perspective view angle. Units on the South and East sides of the building (and to a lesser extent the West) will all view the Anacostia River and Marina. Depending on the unit location, the views of the Anacostia River will also include a varying combination of the Frederick Douglass Bridge (expected to be replaced within five years), the well-manicured grounds of Bolling Air Force Base, and/or the convergence of the Anacostia and Potomac Rivers. It is anticipated that some of the units facing north will see through a view corridor past the Pepco Plant to the Capital Dome. Some of these same units may also see to the Washington Monument unless that view angle is blocked by future development. In summary, Marina Place will offer spectacular views to its residents and visitors and preserves key views and vistas to the waterfront, Capitol Dome, Frederick Douglass Bridge, and Bolling Air Force Base.

ZONING RELIEF REQUESTED

Special Exception – Roof Structures

23. The Applicant is seeking special exception relief pursuant to § 411.11 from § 930.3(b). The Property is uniquely shaped, resulting in a somewhat difficult, but effective and innovative building footprint. The rooftop plans indicate that at the V Street façade, above the main entrance, rooftop structures will encroach within the required one-to-one setback. The object in question is a portion of the penthouse that functions as an architectural embellishment. The structure, labeled as a "roof" on sheet A-8 of the plans, is primarily horizontal in nature.

Special Exception – Varying Heights of Rooftop Structures

24. In addition to the setback special exception, the Applicant is also requesting special exception relief from the requirement of § 411.5 that the entire roof structure have a uniform height. In the case of the proposed project, the walls of the aforementioned, larger, penthouse structure which contains the main building's mechanical equipment, are 13 feet high and the walls of the smaller individual unit penthouse structures are only nine feet high. Furthermore, the area above the elevator shaft reaches the maximum allowed height of 18.6 feet to accommodate the elevators rise to the public rooftop terrace. Other than the accommodating of the elevator shaft, the lack of a uniform height is a function of the need for higher walls for the main penthouse area and the preferred

architectural treatment of limiting the height of the smaller penthouse elements to only the height necessary to enclose the smaller, individual HVAC units.

Variance Relief – Loading

25. According to § 2204.2, all berths and delivery spaces shall be accessible from a street, alley or unobstructed private drive. In this case, the delivery space is in tandem with the loading berth, so it does not meet the accessibility requirements of § 2204.2. Also, § 2203.2 states that all loading platforms "shall be located contiguous and with unobstructed access to the loading berth." In the proposed design, the platform is internal to the building, not next to the berth, and with the delivery space in between. This arrangement may not meet the requirements of § 2203.2. The design of the loading area is in part the result of combining the parking and loading entrances on 1st Street. The loading berth was pushed to the east in order to accommodate auto access to the garage, so the loading platform could not be located immediately next to the berth. The unusual shape of the site also constrains the arrangement of the loading facilities.

Commission Flexibility for Extra Height and FAR

26. The design would require that the Commission grant extra height and density as permitted by § 1603.4. The only parameter provided by the Regulations on when to grant the bonuses is that the building shall contain at least 2.0 FAR of residential use. The proposed project meets that guideline. The extra density would be used to provide additional residential development, a use that is needed in this area. The added height would permit additional residential use and would allow the building to be raised to guard against flooding.

GOVERNMENT REPORTS

27. In its May 16, 2011 report, the Office of Planning ("OP") noted that it is supportive of the Marina Place design and application and recommended approval of the application. As a component of its review process, OP received replies from the Department of Housing and Community Development ("DHCD"), the Metropolitan Police Department ("MPD"), Fire and Emergency Management Services ("FEMS"), and the District Department of the Environment ("DDOE").

28. DHCD noted a discrepancy in the Inclusionary Zoning ("IZ") floor area calculation and unit mix that the Applicant has since resolved. The OP report to the Commission noted a mismatched ratio of the sizes of IZ units to market rate units. The Applicant has committed to meet all IZ requirements at the time of building permit.

29. MPD raised concerns about security, and the Applicant has addressed those issues in a written submittal.

30. FEMS submitted a memorandum and an email to OP. After OP discussed the building plans with the Fire Marshal, he stated that a fully sprinklered building should be able to meet requisite fire codes, though more detailed review would be undertaken at the time of building permit.

31. DDOE noted that the site is within the "Special Flood Hazard Area" and must meet flood hazard rules for construction. That means that residential and non-residential floor area must be constructed at least 18 inches above the base flood elevation, which in this location is 10.6 feet above sea level. The level of the ground floor of the building, therefore, has been designed at an elevation of 12.1 feet above sea level. Because the curb and sidewalk are at approximately 10 feet, the building must be accessed with stairs or ramps. The stairs and ramps have been designed to be integrated into the overall visual scheme of the building and do not compromise the building's conformance with the goals of the CG Overlay. In fact, the design aids the row houses by providing a separation between the residential units and the sidewalk.

ADVISORY NEIGHBORHOOD COMMISION SUPPORT

32. On January 10, 2011, ANC 6D voted unanimously to support the application. On May 26, 2011, Ron McBee and Roger Moffatt, representing ANC 6D, provided testimony to the Commission indicating the community's support of the project.

PERSONS IN OPPOSITION

33. There were no parties or persons that testified in opposition to the project.

CONCLUSIONS OF LAW

1. The Commission finds that, pursuant to 11 DCMR § 1610, the Applicant is required to satisfy the burden of proving the elements that are necessary to approve the overall project under § 3104, as well as the specifically delineated requirements of the CG Overlay. In addition, pursuant to § 411.11, the Applicant must establish the case for special exception relief from the roof structure requirements of §§ 936.1, 411.5, and 930.3(b), and 411.11; and variance relief from the loading space requirements of §§ 2203.2 and 2204.2.

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 site.

3. The Commission is exercising its discretion pursuant to § 1603.4 to grant 0.94 FAR in bonus density and an additional 4.5 feet in bonus height based upon the project's inclusion of at least 2.0 FAR of residential development. The proposed development is within the applicable height, bulk, and density standards of the Zoning Regulations, and the height and density will not cause a significant adverse effect on any nearby properties. The proposed residential/retail use is appropriate for the site, which is located in the CG/W-2 Zone District. The impact of the project on the surrounding area is not unacceptable.

4. Approval of the proposed development is not inconsistent with the Comprehensive Plan.

5. 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) (2001)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC. As is reflected in the Findings of Fact, at its duly noticed meeting held on January 10, 2011 ANC 6D, the ANC within which the Subject Property is located, voted 6-0 to support the application for CG Overlay District Review contingent upon the developers willingness to work with the ANC to make the area more pedestrian friendly and with the least amount of vehicular traffic.

6. 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) to give great weight to OP recommendations. The Commission has carefully considered OP's recommendation for approval and has given the recommendation great weight.

7. Based upon the record before the Commission, having given great weight to the views of the ANC and having considered the report and testimony OP provided in this case, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under 11 DCMR §§ 1610 and 3104 and the independent burden for the requested special exception and variance relief. The Commission finds that the project fully satisfies the goals and objectives of the CG Overlay District. The Commission finds that granting the requested variance and special exception relief will create a building that will further the goals of the CG Overlay District and the relief will not have an adverse impact on adjacent properties. The Commission finds that the proposed project use will add to the vitality of this emerging area. The proposed structure is consistent in height and bulk zoning standards for the area and has been designed to minimize unarticulated blank walls. The Applicant has submitted a LEED checklist for the project which supports the ability of the project to achieve LEED Silver certification eligibility.

8. The Commission finds that the color palette for the proposed structure is appropriate. The Commission approves of the quality of the architectural materials that are proposed for the façades of the structure and the level of detail as presented to the Commission.

9. The Commission finds that the Applicant has satisfied the burden of proof enumerated in § 411.11 for the proposed roof structure special exception relief. The Commission concludes that having separate roof structures of varying heights on this building will minimize impact on neighboring properties and will not impair the intent and purpose of the Zoning Regulations. In regard to the roof structures not being set back from the exterior walls of the building at a ratio of 1:1; the Commission agrees with the information presented by the Applicant that the roof structure of the elevator mechanical equipment has only limited visibility from V Street and 1st Street. The Commission also finds that incorporating the main roof structure into an architectural feature above the main entrance is an appropriate treatment for this roof structure. Therefore, the Commission concludes that approval of the roof structures that do not meet the setback requirements will not impair the intent and purpose of the Zoning Regulations and will not create adverse impacts on neighboring properties.

10. The Commission concludes the Applicant has satisfied its burden of proof for variance relief from §§ 2204.2 and 2203.2 to permit an internal delivery platform that is not next to the loading platform. The Commission is authorized to grant area variance relief pursuant to § 610.7. In order to satisfy the standards for area variance relief, the Applicant must satisfy a three-part test: (1) the property must be subject to an extraordinary or exceptional situation or condition; (2) a practical difficulty will result if the applicant is required to satisfy the strict application of the Zoning Regulations; and (3) no harm to the public or to the zone plan will occur as a result of the approval of the variance application. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property", not just the "land"; and that "….property generally includes the permanent structures existing on the land [footnote omitted]." *Id*. at 293-294. The Court held that the exceptional situation standard of the variance test may be met where the required hardship inheres in the land, or the property (i.e., the building on the land). The D.C. Court of Appeals defined "practical difficulty" in *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A. 2d 535, 542 (D.C. 1972) as the following: "[g]enerally 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." 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). Finally, it is well settled that the BZA may consider "… a wide range of factors in determining whether there is an 'unnecessary burden' or 'practical difficulty' ….". *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). The *Gilmartin* case also notes three factors that can be used to determine whether the unnecessarily burdensome/practical difficulty standard has been satisfied. These include: (i) the weight of noncompliance; (ii) the severity of the variance requested; and (iii) the effect the proposed variances would have on the overall zone plan. Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible. In this case the Commission concludes that the combination of locating the parking and loading entrances on 1st Street, pushing the loading berth to the east in order to accommodate auto access to the garage, and the unusual shape of the site, constitute the exceptional situation on the property that creates a practical difficulty if the Applicant is required to satisfy the strict application of the Zoning Regulations. The Commission concludes that no harm to the public or to the zone plan will occur as a result of the approval of the variance application.

11. The Commission agrees with the testimony of the Applicant that the number of proposed parking spaces is appropriate given the lack of convenient public transportation in the area and that the Applicant's request for flexibility to adjust the amount of parking based upon the number of units to be constructed is justified.

12. The application for CG Overlay District Review will promote the orderly development of the site in conformity within the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and the Map of the District of Columbia.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL**, consistent with this Order, of the application for CG Overlay District Review, special exception, and variance relief. For the purposes of the following conditions, the term "Applicant" shall be the person owning fee simple title to the Property or their agent. This approval is subject to the following guidelines, conditions, and standards:

1. The project shall be built in accordance with the architectural plans, elevations, and materials submitted in the record of Zoning Commission Case No. 10-21 as Exhibit 42, as modified by the guidelines, conditions, and standards below.

2. The project shall have a density of 5.74 FAR and a building height of 84.5 feet, excluding roof structures.

3. 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 a minimum of 52 points, although the Applicant is not required to seek LEED-Silver certification for the building.

4. The Applicant shall have flexibility with the design of the project in the following areas:

   a. To vary the location and design of all interior components, including but not limited to, partitions, structural slabs, doors, hallways, columns, windows, stairways, bicycle storage rooms, shower and changing room, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;

   b. To vary the final selection of the exterior materials within the color ranges and material types proposed, based on cost, availability and market trends at the time of construction, provided that there is no overall reduction in quality;

   c. To make minor refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals;

   d. To vary the amount of retail space in the project by 10% and the final number of units from 75 to 110 total apartment units;

   e. To make refinements to the garage configuration, including layout, location and design of parking spaces.

   f. To add a third level of below grade parking in the event the Applicant cannot obtain City approval to provide up to 46 parking spaces in the adjacent vault space at terms deemed acceptable to the Applicant, provided that the total number of parking spaces for the project shall not exceed a ratio of 1:1 for residential units plus four spaces to accommodate building staff and the retail operations.

   g. To adjust the placement of windows, balconies, balcony railings, and privacy screens as necessary based upon the final unit count and layout of demising walls, so long as the adjustments do not materially change the exterior appearance of the building;

   h. To install awnings and/or signage for retail space based upon the retail leasing after construction of the project; and

i. Exceed by not more than two percent the percentage of lot occupancy or gross floor area of the project.

5. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.* (Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On July 11, 2011, upon the motion of Vice Chairman Schlater as seconded by Chairman Hood, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR 3028, this Order shall become final and effective upon publication in the *D.C. Register* on August 12, 2011.

Anthony J. Hood
ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

Jamison L. Weinbaum
JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning

Z.C. CASE NO.: 10-21

As Secretary to the Commission, I hereby certify that on AUG 8 2011 copies of this Z.C. Order No. 10-21 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Cynthia Giordano, Esq.
   Saul Ewing, LLP,
   2600 Virginia Avenue, N.W.
   Suite 1000 – The Watergate
   Washington, D.C. 20037-1922
3. ANC 6D
   1101 4th Street, S.W. Suite W130
   Washington, DC 20024
4. Commissioner Roger Moffatt
   ANC/SMD 6D05
   1301 Delaware Ave. SW #717
   Washington, DC 20024
5. Gottlieb Simon
   ANC
   1350 Pennsylvania Avenue, N.W.
   Washington, D.C. 20004
6. Councilmember Tommy Wells
7. DDOT (Martin Parker)
8. Melinda Bolling, Acting General Counsel
   DCRA
   1100 4th Street, S.W.
   Washington, DC 20024
9. Office of the Attorney General (Alan Bergstein)

ATTESTED BY: Sharon S. Schellin
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning