

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 12-09
Z.C. Case No. 12-09
NJA Associates, LLC and St. Matthews Baptist Church
(Capitol Gateway Overlay Review @ Square 743-N, Lots 79 & 834)
February 11, 2013

Pursuant to notice, the Zoning Commission of the District of Columbia (the "Commission") held a public hearing on October 25, 2012, to consider an application filed by NJA Associates, LLC ("NJA") and St. Matthews Baptist Church (collectively referred to as the "Applicant") for review and approval of a proposed residential building at 1111 New Jersey Avenue, S.E. pursuant to §§ 1604 and 1610 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The subject property includes Lots 79 and 834 in Square 743-N. In addition, the Applicant sought special exception relief to allow multiple roof structures with one structure not meeting the setback requirements under § 411.11, which is made applicable to Commercial zones by § 770.6 (a).¹ 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

1. On July 6, 2012, the Applicant filed an application for review and approval of a proposed residential building along M Street, S.E. pursuant to the Capitol Gateway Overlay District provisions for property located at 1111 New Jersey Avenue, S.E. The subject property includes Lots 79 and 834 in Square 743-N and covers approximately 30,360 square feet of land area. Square 743-N is bounded by L Street on the north, New Jersey Avenue on the east, M Street on the south, and 1st Street on the west in southeast Washington, D.C. The subject property occupies most of the eastern half of Square 743-N and has approximately 301 linear feet of frontage along New Jersey Avenue, S.E., 112 feet of frontage along M Street, S.E., and 69 feet of frontage along L Street, S.E. The east entrance of the Metrorail Navy Yard Station is located at the intersection of New Jersey Avenue and M Street on the southeast corner of the site. The subject property is located within the C-3-C Zone District and also falls within the Capitol South Transferable

¹ In its post-hearing submission, the Applicant revised its roof plan to include two roof structures both of which measure 18'-6", thus eliminating the need for relief for enclosure of walls of unequal height.

Development Rights ("TDR") Receiving Zone. Within this area, as per 11 DCMR § 1709.21, owners of properties that can achieve 130 feet in height pursuant to the Height Act are able to purchase TDRs To permit a maximum zoning height of up to 130 feet and a floor area ratio ("FAR") of up to 10 FAR. The southern portion of the site is located within the Capitol Gateway ("CG") Overlay District. The CG Overlay extends into the subject property for a depth of approximately 150 feet from M Street.

2. The purposes and objectives of the CG Overlay District, as enumerated in § 1600.2, that are relevant to the proposed development include:
 - Assuring 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;
 - Encouraging a variety of support and visitor-related uses, such as retail, service, entertainment, cultural and hotel or inn uses;
 - Requiring suitable ground-level retail and service uses and adequate sidewalk width along M Street, S.E., near the Navy Yard Metrorail Station; and
 - 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 facade to ensure adequate light and air, and a pedestrian scale.
3. The Applicant filed a prehearing submission in support of the application on October 5, 2012 (the "Prehearing Submission"). (Exhibit ["Ex."] 11.) The Prehearing Submission included resumes of the expert witnesses, a conceptual LEED checklist, and updated architectural plans and elevations.
4. After proper notice, the Commission held a hearing on the application on October 25, 2012. Parties to the case included the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the subject property is located.
5. At its duly noticed meeting on October 15, 2012, ANC 6D voted 6-0-1 to oppose the proposed project. In its letter to the Commission, dated October 25, 2012, the ANC stated that its opposition to the project was based on several reasons, including: the development team was not seeking LEED Certification; the design of the retail level of the building; the design of the building's New Jersey Avenue and L Street facades and alley elevations; and the landscape and rooftop designs. This ANC report, the Applicant's response, and the Commission's findings related to the ANC's issues and concerns are discussed more fully below.

6. Expert witnesses appearing on behalf of the Applicant included Frederick Hammann of WDG Architecture (architecture & design), Christopher L. Kabatt of Wells & Associates, Inc. (transportation planning and analysis), Trini M. Rodriguez of Parker Rodriguez (landscape architecture), and Steven E. Sher of Holland & Knight, LLP (land use and zoning). At the conclusion of the hearing, the record was closed except for a post-hearing submission from the Applicant that attached the revised plans presented at the hearing, and a response thereto by the ANC.
7. On November 26, 2012, the Applicant submitted its first post-hearing submission which included Revised Architectural Plans and Elevations. The revised plans included (1) more detail on the roof plan regarding the landscaping, the areas of relief, and sections of the roof; (2) a revised retail design at the corner of M Street and New Jersey Avenue; (3) more detail regarding lighting and retail signage; (4) an updated design of the courtyards adjacent to the alley and on the second level of the building; and (5) revised cladding materials for the roof structures. The submission also included a memorandum indicating that the amount of parking provided for the project is consistent with other developments near the proposed project, as well as a copy of the Applicant's written response to each of the concerns raised by ANC 6D in its October 25, 2012 report.
8. On December 3, 2012, ANC 6D submitted a second report. The report stated the ANC continued to oppose the project, and noted a number of issues and concerns with the Project. This ANC report, the Applicant's response, and the Commission's findings related to the ANC's issues and concerns are discussed more fully below.
9. At its public meeting on December 10, 2012, the Commission considered the additional documents filed by the Applicant and the ANC.
10. The Commission expressed concern over the portion of the north penthouse structure that enclosed space intended for indoor communal recreation use. The Applicant stated that the enclosure should be permitted pursuant to § 411.1, which permits penthouses "used for recreational uses accessory to communal rooftop recreation space." The Commission interprets § 411.1 as allowing penthouses used for communal recreation where the uses are accessory to the outdoor rooftop uses, but not allowing penthouses used for indoor communal recreation that is independent of any outdoor rooftop use. The plans showed space in the north penthouse that was to be used for indoor communal recreation that was independent of the outdoor rooftop space.
11. The Commission directed the Office of Planning ("OP") to present the revised plans the Applicant submitted with its November 26, 2012 filing to the Zoning Administrator so that the Zoning Administrator could review the plans and advise whether the roof structure complied with § 411.1 of the Zoning Regulations, and for OP to report the

results to the Commission. The Commission directed the Applicant to submit information about whether there are other projects with similar rooftop uses approved by the District. The Commission also requested that the Applicant respond to ANC's request that it preserve a particular large elm tree located in the tree box strip on New Jersey Avenue.

12. On January 4, 2013, OP submitted a report describing the results of its meeting with the Zoning Administrator, who concluded that the roof structure would not comply with § 411.1 of the Zoning Regulations and therefore would not be approved.
13. On January 7, 2013, the Applicant submitted a second post-hearing submission that contained additional information about the proposed roof structure, requested that the Commission approve the application with the flexibility to allow the Applicant to modify the design to comply with the Height Act and § 411.1 of the Zoning Regulations, and responded to the ANC's request to preserve the elm tree.
14. At a public meeting on January 14, 2013, the Commission considered the additional documents. The Commission concluded that the roof top design was not acceptable because the north penthouse structure contained enclosed space intended for indoor communal recreation use not permitted by § 411.1 of the Regulations, and deferred taking action to give the Applicant an opportunity to submit a revised design that would comply with the applicable Zoning Regulations.
15. On January 22, 2012 the Applicant submitted a third post-hearing submission. (Ex. 27.) The submission attached revised roof plans, and elevation drawings. The submission also attached correspondence indicating that Applicant had presented the revised plans to the Zoning Administrator, and that the Zoning Administrator concluded that they complied with the applicable Zoning Regulations.
16. At a public meeting on February 11, 2013, the Commission considered the Applicant's final submission, and took proposed and final action to approve the application. The Commission determined that the project satisfies all applicable requirements of the CG Overlay District and meets the requirements for the requested special exception relief.

Project Overview

17. The Applicant intends to construct a 13-story residential building on the subject property. The proposed building will have an overall density of up to 10.0 FAR and will rise to a maximum height of 130 feet. As noted, the achievement of this density and height will require the Applicant to purchase the requisite amount of transferrable development rights. The building will contain 312 residential units and approximately 12,889 square feet of gross floor area devoted to retail and service uses. The building will also include a

four-level underground parking garage that provides a total of 172 parking spaces and 104 interior bicycle parking spaces and 20 bicycle parking spaces in public space. The proposed development will fully satisfy the requirements of Chapter 21 of the Zoning Regulations. The parking garage is presently designed to be accessed from L Street.

18. The proposed building will also include the required loading berth, service/delivery space, and loading platform. These facilities will comply with all applicable requirements of Chapter 22 of the Zoning Regulations. The loading area is presently designed to be accessed from the adjacent north-south public alley along the west side of the property.

Description of the Surrounding Area

19. The subject property is located on the west side of New Jersey Avenue between L and M Streets, in Southeast Washington, D.C. The majority of the site is a surface parking lot. The entrance to the Navy Yard - Ballpark Metrorail Station is at the southeast corner of the site. St. Matthews Baptist Church is at the southwest corner of New Jersey Avenue and L Street. A 12-story office building is across the alley to the west at 100 M Street, S.E., at the northeast corner of 1st and M Streets. A 13-story residential building is across the alley to the west at 1100 First Street, S.E., at the southeast corner of 1st and L Streets. A two-story commercial building is located to the north across L Street.
20. Although much of the surrounding property is currently vacant or underutilized, the area is quickly becoming a magnet for both public and private investment due to its proximity to the Anacostia Waterfront, the Southeast Federal Center, and the Washington Nationals Baseball Stadium.
21. Much of the surrounding property is zoned C-3-C to the north and west and CR to the south. The areas to the west, north, and east of the subject property are designated for high-density commercial use, while the property across M Street to the south is designated for mixed-use development including high-density commercial and high-density residential land uses. The site is located northwest of the U.S. Department of Transportation headquarters and Southeast Federal Center and west of the Capper/Carrollsbury planned unit development ("PUD") and the proposed Canal Blocks Park.

Capitol Gateway Overlay District Design Requirements

22. The proposed project is subject to the requirements of § 1604 of the Zoning Regulations because the new building will have frontage on M Street, S.E. within the CG Overlay District. The project is also subject to the requirements of § 1610 because the new building will be located on a lot that abuts M Street, S.E. within the CG Overlay District.

23. The proposed project will not involve the construction of any new driveways or curb cuts from M Street. The below-grade parking garage will be accessed from L Street, while the building's loading facilities will be reached from the north-south public alley dividing the square. (§ 1604.2.)
24. The proposed building will be set back approximately 27'-4" from the curb along M Street. (§ 1604.3.)
25. The proposed building will provide approximately 12,889 square feet of preferred retail uses on the ground floor. This represents approximately 42% of the gross floor area on the building's ground floor. With the exception of areas devoted to building entrances, these preferred uses will occupy 100% of the new building's frontage along M Street. (§ 1604.4.)
26. On the ground floor, at least 58% percent of the building's streetwall along M Street will be covered by commercial entrances and display windows with clear or low-emissivity glass. (§ 1604.6.)
27. All portions of the proposed building within the CG Overlay devoted to ground-floor retail uses will have a clear floor-to-ceiling height of no less than 14 feet. (§ 1604.7.)
28. The height, bulk, and design of the proposed building, as well as its landscaping and sidewalk treatment, are consistent with the Zoning Regulations, the Comprehensive Plan, and the general scale of development in the surrounding neighborhood. The new residential and retail uses in the proposed project will result in an appropriate balance of residential and retail uses within Square 743-N and the broader vicinity. (§ 1610.3(a),(b),(c).)
29. The proposed development will provide a substantially wide sidewalk to improve the flow of pedestrian traffic near the Navy Yard Metrorail station. (§ 1610.3(c),(d).)
30. The overall project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring property. With the exception of the requested special exception relief to allow multiple roof structures with one structure not meeting the setback requirement, the proposed project will comply will all applicable zoning requirements. (§ 3104.1.)
31. By placing the entrance to the underground parking garage on L Street, rather than on M Street or on the public alley to the west, the building's design will minimize the number of vehicles that will cross the sidewalk on M Street. (§ 1610.3(d).)

32. The proposed building's south facade has been designed to enhance the streetwall along M Street. The proposed retail uses on the ground floor will provide a vibrant pedestrian experience. (§ 1610.3(e).)
33. The proposed project will be designed with sustainability features including 51 points on the conceptual LEED scorecard, which is equivalent to LEED Silver, and will have no significant adverse impacts on the natural environment. The building will incorporate a number of sustainable design features such as energy-efficient mechanical and electrical systems. The project's proximity to the Navy Yard Metrorail station will also promote increased transit use by the building's occupants. (§ 1610.3(f).)

Special Exception Relief from the Roof Structure Requirement

34. The Applicant requested special exception relief to allow multiple roof structures with one structure not meeting the setback requirements under § 411.11, which is made applicable to Commercial zones by § 770.6 (a). Under § 411.11, special exception relief from the strict requirements for a roof structure may be granted, where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and would be "unduly restrictive, prohibitively costly, or unreasonable." (11 DCMR § 411.11.) Deviations from the roof structure requirements may be approved if the intent and purpose of Chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." *Id.*
35. The plans include two roof structures, both of which now measure 18'-6". The southern-most enclosure meets the setback requirements from each edge of the roof, and the northern-most enclosure requires setback relief along the western edge of the roof. Consistent with § 411.1 of the Zoning Regulations, the northern-most enclosure includes mechanical equipment and accessory communal recreation space.
36. The rooftop terrace is the main amenity space serving the residents of the building. This terrace is set back from the edge of the parapet such that the terrace area cannot be viewed from the adjacent streets. A variety of seating opportunities have been located throughout the terrace to provide for opportunities for social interaction. A swimming pool is also located at the southwest portion of the roof and is also set back such that it cannot be viewed from the adjacent streets. Plantings are located throughout the rooftop terrace at both levels in the form of a green roof and as planters associated with the higher level terrace taking advantage of the larger soil volume available for planting. This planting will add more seasonal interest and will provide an opportunity for a variety of layered planting areas. Moreover, the northern-most enclosure has been revised to include darker metal cladding materials, and the southern-most enclosure has been revised to include a "green wall."

37. The proposed building will provide adequate off-street service functions such as parking, loading facilities, and vehicular access points. The underground parking garage, spaces, and aisles will satisfy the size, location, access, maintenance, and operational requirements set forth in Chapter 21 of the Zoning Regulations. The loading facilities will comply with the all of the applicable requirements set forth in Chapter 22 of the Zoning Regulations. (§ 774.5.)
38. This application was referred to OP and the District Department of Transportation ("DDOT") for review. (§ 774.6.)
39. The requested waiver of the roof structure requirement will have no adverse impacts on neighboring properties.

Office of Planning Reports

40. By report dated October 25, 2012, OP recommended approval of the application. (Ex. 13.) The report concluded that the proposed project was consistent with the requirements of the CG Overlay District and that the Applicant met the requirements for special exception relief from the roof top structure setback requirements of § 411.11. OP stated that the proposed development does not require PUD or rezoning approval and is generally consistent with most aspects of the Zoning Regulations, specifically height, density, and use. OP found that the proposal is generally consistent with the Comprehensive Plan and would further certain General Principles of the Plan. OP stated that the application is consistent with major policies from various elements of the Comprehensive Plan including the Land Use and Transportation Citywide Elements, and the Lower Anacostia Waterfront/Near Southwest Area Element. OP testified in support of the application at the Commission's public hearing on the application.
41. In its report, OP requested that the Applicant address a number of specific questions. At the hearing, OP testified that the Applicant had addressed most of the questions identified, but stated that it had remaining questions regarding: (1) the lighting and retail signage plan; (2) the relocation of the Pepco vaults; (3) labeling areas of roof structure relief; (4) the definition of accessory recreational use area; and (5) the grading plan for the point at L Street and New Jersey Avenue.
42. The Applicant provided testimony at the hearing and a post-hearing submission to address the questions identified by OP. Specifically, the Applicant: (1) provided more detail regarding its lighting and signage plans; (2) indicated that it will address and resolve the relocation of the Pepco vaults during the public space permitting process; (3) provided a more detailed roof plan; (4) provided a more detailed plan of accessory recreational use area; and (5) provided expert testimony regarding the change in grading at L Street and New Jersey Avenue which was due to the design change from residential

to retail use. Therefore, the Commission finds that the Applicant has addressed the questions outlined in OP's report.

43. By report dated January 4, 2013, OP stated that in response to the Commission's request at the December 10, 2012 public meeting, it met with the Zoning Administrator to review the proposed roof structure shown in the plans submitted November 26, 2012 to ascertain whether what was shown in the plans complied with § 411.1 of the Zoning Regulations. The report stated that the Zoning Administrator did not believe it complied with § 411.1 and would therefore not be approved. (Ex. 25.)
44. The Applicant redesigned the rooftop in response to this report, submitted the revised plans to the Commission, and attached correspondence with the Zoning Administrator in which he indicated that the revised rooftop design complied with the applicable Zoning Regulations. Therefore, the Commission finds that the Applicant has addressed this issue.

DDOT Report

45. By report dated October 15, 2012, DDOT recommended approval of the proposal and found that the design review and request for exception relief will not adversely impact the surrounding transportation network with the condition that the Applicant addresses certain questions including traffic mitigation, bicycle racks, unbundling of parking costs, parking management plan, and providing a space for car sharing services. (Ex. 14.)
46. At the public hearing, DDOT testified that the Applicant had addressed the issues of concern raised by DDOT and the only outstanding question related to the uses of the proposed parking spaces. Specifically, the Applicant (1) evaluated the intersection of L Street, S.E. and New Jersey Avenue and provided further analysis regarding sight distances and possible mitigation measures to improve safety; (2) agreed to provide bike racks at each building entrance; (3) agreed to unbundle all parking costs from the cost of lease or purchase of residential and retail spaces; (4) indicated that the parking spaces provided in excess of the zoning requirements will be for residential use only; and (5) agreed to work with DDOT to designate one on-street parking space for ridesharing, although the Applicant is unable to provide a space in the garage for ridesharing.

ANC 6D Reports

47. At its duly noticed meeting on October 15, 2012, ANC 6D voted 6-0-1 to oppose the proposed project. In its report to the Commission, dated October 25, 2012, the ANC stated the following issues and concerns: (1) first, the development team was not seeking LEED Certification, and the project is large and within the Anacostia watershed; (2) second, the design of the retail level of the building, the building in general, and the

building's L Street façade; (3) third, insufficient alley lighting and openings on the ground floor; (4) fourth, several related issues pertaining to the garage access, namely a preference for garage access from the alley, a perhaps conflicting desire to maintain retail uses on the street, concern that maximum consideration be given to Anne's Wigs a longstanding business that will be hemmed in by garages and alleys, and a desire that design of the garage door is enhanced; and (5) fifth, concern that the landscape and rooftop designs are not detailed enough and do not mention sustainable features. (Ex.16.)

48. The Applicant addressed the concerns of the ANC at the hearing, in its meeting with the ANC on November 19, 2012, and in its post-hearing submissions. Specifically, the Applicant provided the ANC 6D with revised project plans, and provided the ANC with a written memorandum indicating how the Applicant responded to each of the concerns raised by the ANC 6D its October 25, 2012 letter. The Applicant's memorandum addressed the ANC's concerns, as follows:

- a) *LEED Certification:* The Applicant indicated that it increased the amount of sustainability features to be incorporated into the project. The revised building plans include 51 points on the conceptual LEED scorecard, which is the equivalent of LEED Silver. The building's sustainable design features are superior to what would be provided in a matter-of-right residential development at this location. The Commission finds that the proposed project design includes sustainability features which are the equivalent of LEED Silver;
- b) *Retail Level:* The Applicant indicated that the retail level of the building has been designed to be an open and attractive feature. Also, in response to comments from ANC 6D, the Applicant increased the amount of retail from 9,409 square feet to the current proposal of 12,889 square feet. The perspective views document the emphasis placed on the retail level and define the extent of glazing, strong architectural canopies, and stone. The development also includes a lighting scheme for the pedestrian level of the building, a storefront designed to incorporate a diverse mix of retail tenants, and architectural elements incorporated into the retail level that will allow multiple storefront and signage designs to develop within a uniform framework. The Commission finds that the retail level is designed as an important feature of the building and will create an open and attractive environment which will enhance the neighborhood;
- c) *Building Design:* The Applicant indicated that the design of the building should be viewed as a composition rather than isolated facade elevations. The extensive glazing at the projected bays at the M Street/New Jersey Avenue intersection is intended to create a transparent corner. This highly transparent facade treatment continues halfway down New Jersey Avenue, and reinforces the importance of the intersection. This architectural element will allow the activities occurring within

the building and from the occupant's use of the balconies to contribute to the overall activation of the building façades. The alley elevation is composed of similar design elements as those facing public streets and maintains similar architectural characteristics. Glazing and balconies have been incorporated for the units adjacent to the courtyards, which results in the building not turning its back on the alley. In addition, the courtyards adjacent to the alley have been landscaped in order to provide more activity at the rear of the building. The Commission finds that the building design will architecturally be in character with and a good compliment to existing buildings defining the neighborhood. The Commission further finds that the design of the proposed building meets the purposes of the Capitol Gateway Overlay and meets the specific design requirements of § 1604 of the Zoning Regulations;

- d) *Garage Access from L Street:* The Applicant indicated that the proposed garage entrance is located on L Street and meets the DDOT requirements regarding distances between curb cuts, driveway widths, and distance from intersections. At the request of the ANC, the Applicant studied relocating the garage entrance to the alley and found it is not feasible due to a number of constraints. The Applicant indicated that locating the garage entrance on L Street will help to minimize vehicular and pedestrian conflicts in the alley, and at the intersection of M Street and the alley, which is heavily trafficked. The Commission finds that the garage access meets DDOT requirements and that locating the garage on L Street will help minimize vehicular and pedestrian conflicts in the alley;
 - e) *L Street Landscape:* The Applicant indicated that it is committed to providing attractive landscaping and streetscapes adjacent to the site. The Applicant will work with DDOT to install as much landscaping as feasible and appropriate in the public space adjacent to the site on L Street. The proposed garage door on L Street has been designed as an attractive feature of the building. The Commission finds that the proposed L Street streetscape will enhance the character of L Street and the neighborhood; and
 - f) *Landscaping and Roof Designs:* The Applicant has prepared detailed landscaping and roof plans. The Applicant will be installing an extensive amount of landscaping on New Jersey Avenue and will include a variety of tree types and other planting material and a number of bio-retention areas, which will help to promote sustainability. The Commission finds that the Applicant's detailed landscaping and roof designs will improve the aesthetic and visual character of the building.
49. On November 19, 2012, the Applicant presented Revised Architectural Plans & Elevations to the ANC. With respect to lighting, the Applicant presented the detailed

signage and lighting plans included as sheets A-11, R-11C, and R-11d of the plans which clearly depict the location and type of proposed lighting for the project. With respect to the building design, the Commission finds that the design of the proposed building meets the purposes of the Capitol Gateway Overlay and meets the specific design requirements of § 1604 of the Zoning Regulations.

50. On December 3, 2012, ANC 6D submitted a revised report to the Commission. The report stated the ANC continued to oppose the project, and noted the following concerns about the revised project:
- The design of the L Street façade appeared to be the back of the building when it actually a primary façade facing a street;
 - The massing of the building created a monolithic appearance, and in particular the middle “punched window” section is flat and lifeless;
 - The retail level had insufficient architectural articulation;
 - The design of the parking garage door detracts from the architecture of the building; and
 - A desire that the Applicant save the large elm tree located on the tree box strip on New Jersey Avenue near the intersection with M Street, S.E.
51. As stated above, the Commission finds that the design of the proposed building meets the purposes of the Capitol Gateway Overlay and meets the specific design requirements of § 1604 of the Zoning Regulations, and therefore does not find the ANC’s design-related advice persuasive. With respect to the ANC’s request to save the elm tree, the Applicant stated in its January 7, 2013 submission that incorporating this tree would compromise the Applicant’s landscaping plan. The Applicant’s plan calls for the planting of nine new street trees along the tree box strip along the project boundary, and replacing the existing tree with a new tree will allow for all the new healthy trees to grow together in a well-maintained manner. The spacing, type, and location of the trees in the plan are consistent with the District of Columbia’s Public Realm Design Manual, and Anacostia Waterfront Initiative guidelines. The Commission finds that the Applicant’s plan to replace the existing tree with the trees shown in the landscaping plan is preferable, because it allows the plan to work as a cohesive whole in a manner consistent with the applicable Design Manual and guidelines.

CONCLUSIONS OF LAW

1. The application was submitted pursuant to 11 DCMR §§ 1604 and 1610 for review and approval by the Commission. The application also requested special exception relief pursuant to 11 DCMR § 411.11.
2. The Commission provided proper and timely notice of the public hearing on the application by publication in the *D.C. Register* and by mail to ANC 6D, OP, and owners of property within 200 feet of the site.
3. Pursuant to 11 DCMR §§ 1604.1 and 1610.1, the Commission required the Applicant to satisfy all applicable requirements set forth in 11 DCMR §§ 1604.2 through 1604.9 and 1610.2 through 1610.3. Pursuant to § 1610.7, the Commission also required the Applicant to meet the requirements for special exception relief set forth in 11 DCMR §§ 411.11 and 3104.1. The Commission concludes that the Applicant has met its burden.
4. The proposed development is within the applicable height, bulk, and density standards for the C-3-C Zone District and will not tend to affect adversely the use of neighboring property. The overall project is also in harmony with the general intent and purpose of the Zoning Regulations and Map.
5. The requested relief from requirements for a roof structure is in harmony with the general intent and purpose of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property.
6. The proposed residential and retail uses are appropriate for this location and are consistent with the subject property's high-density commercial designation on the Future Land Use Map of the Comprehensive Plan. The project is not inconsistent with the Comprehensive Plan.
7. The proposed project will further the objectives of the CG Overlay District as set forth in § 1600.2 and will promote the desired mix of uses set forth therein.
8. No person or parties appeared at the public hearing in opposition to the application.
9. The off-street parking for the project is in compliance with the requirements of Chapter 21.
10. The Commission is required by § 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 of the affected ANC. In other words, the Commission must articulate with particularity and precision the reasons why the ANC

does or does not offer persuasive advice in a particular case. As described in more detail above, the Commission concludes that the Applicant has sufficiently addressed all the issues and concerns raised by the ANC in its reports, and the Commission further finds that the design of the proposed building meets the purposes of the Capitol Gateway Overlay and meets the specific design requirements of § 1604 of the Zoning Regulations.

11. The Commission is required by § 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. As described more fully above, OP recommended approval of the Project, and the Applicant has adequately addressed all the issues OP raised in its reports.
12. Based upon the record before the Commission, including witness testimony, the reports submitted by OP, DDOT, and ANC 6D, and the Applicant's submissions, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under 11 DCMR §§ 1604 and 1610, as well as the independent burden for the requested special exception relief under 11 DCMR §§ 1610.7 and 3104.1.

DECISION

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

1. The approval of the proposed development shall apply to Lots 79 and 834 in Square 743-N.
2. The project shall be built in accordance with the Revised Architectural Plans and Elevations dated November 26, 2012, marked as Exhibit 22, as modified by Exhibit 27, and as modified by the guidelines, conditions, and standards below.
3. The project shall include no more than 303,600 square feet of gross floor area. The distribution of uses and densities shall be as shown on Sheet A-0.2 of the Revised Architectural Plans and Elevations.
4. The overall density on the site shall not exceed 10.0 FAR.
5. Except for roof structures, the maximum height of the new building shall not exceed 130 feet. Roof structures shall be constructed in accordance with Exhibit 27.
6. The landscape treatment shall be in accordance with Sheet L-2 of the Revised Architectural Plans and Elevations.

7. A minimum floor-to-ceiling clear height of 14 feet shall be provided for those portions of the building within the CG Overlay dedicated to ground-floor retail, service, entertainment, and arts uses.
8. One loading berth at 55 feet deep and one service/delivery loading space shall be provided for the proposed building.
9. A minimum of 35% of the gross floor area of the ground floor shall be devoted to the preferred uses listed in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of the Zoning Regulations.
10. Pursuant to 11 DCMR § 3130, the portions of this Order granting a special exception 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 § 3130.6. No other action, including the filing or granting of an application for a modification pursuant to §§ 3129.2 or 3129.7, shall extend the time period.
11. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.1 *et seq.* (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, 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. Violations will be subject to disciplinary action. The failure or refusal of the Applicant to comply with the Act shall furnish grounds for the denial or, if issued, the revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On February 11, 2013, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

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In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*, that is on May 24, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING