

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 15-23**  
**Z.C. Case No. 15-23**  
**SQ700 Trust, LLC**  
**(Capitol Gateway Overlay District Review @ Square 700, Lot 48)**  
**December 14, 2015**

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on November 5, 2015, to consider an application filed by SQ700 Trust, LLC ("Applicant") for review and approval of a 13-story residential building on the southern portion of Lot 48<sup>1</sup> in Square 700 ("Property"), pursuant to §§ 1605 and 1610 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR" or "Zoning Regulations"), which apply to new construction in the CG Overlay on any lot that abuts M Street, S.E., South Capitol Street, S.E., or is within Square 700. The application also included requests for area variances from: (i) the lot occupancy requirements of 11 DCMR § 634.1 and 1601.1; and (ii) the loading requirements of 11 DCMR § 2201.1. 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 September 9, 2015, the Applicant filed an application for review and approval of a new 13-story residential building pursuant to 11 DCMR §§ 1605 and 1610, which apply to new construction on any lot within the Capitol Gateway ("CG") Overlay District with frontage along M Street, S.E., South Capitol Street, S.E., as well as properties within Squares 700 and 701 north of the Ballpark site. The Property is located in Square 700 and consists of Lot 48. The application included requests for area variances from: (i) the lot occupancy requirements of 11 DCMR §§ 634.1 and 1601.1; and (ii) the loading requirements of 11 DCMR § 2201.1.
2. The Applicant filed a prehearing submission in support of the application on October 16, 2015 ("Prehearing Submission"). (Exhibits ["Ex."] 11 and 11A-C.) The Prehearing Submission included a statement summarizing the application's compliance with the applicable provisions of the CG Overlay regulations and justification for the requested areas of variance relief. The Prehearing Submission also included updated architectural drawings, a Comprehensive Transportation Review ("CTR") Report prepared by

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<sup>1</sup> Lot 48 was established by plat of subdivision recorded in the records of the D.C. Surveyor on September 17, 2015, consolidating former Lots 43 and 866 in Square 700 into a single record lot.

Gorove/Slade, and resumes of expert witnesses that might testify in support of the application at the public hearing.

3. The Commission held a hearing on the application on November 5, 2015. Parties to the case included the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Property is located. Proper notice of the hearing was provided by the Office of Zoning pursuant to 11 DCMR § 3015.
4. Witnesses appearing at the hearing on behalf of the Applicant included Amy Phillips of Monument Realty, Brad King of Gensler, and Daniel VanPelt of Gorove/Slade. Mr. King and Mr. VanPelt were recognized by the Commission as experts in their respective fields of architecture and transportation engineering.
5. At the conclusion of the public hearing on November 5, 2015, the Commission indicated support for the overall design and materials of the residential building, but requested that the Applicant take additional steps, including (i) meet with the District Department of Energy and the Environment ("DOEE") and study whether the building can reach a higher LEED rating; (ii) provide an illustrative rendering showing what will be located on the roof and study whether the roof structure could be set farther back from the south exterior building wall; (iii) consider redesigning the south façade of the building, and consider prohibiting any advertising on this wall; and (iv) consider minimizing the amount of glass on the townhouses, and provide precedent images of illuminated townhouses.
6. The Applicant submitted materials responsive to the Commission's comments on December 3, 2015, including a revised booklet of drawings and LEED Scorecard ("Posthearing Submission") and submitted proposed findings of fact and conclusions of law, pursuant to 11 DCMR § 3026 on December 3, 2015. (Ex. 23, 23A, 24.)
7. At its December 14, 2015 public meeting, the Commission took final action to approve the application. The Commission determined that the project satisfies all applicable requirements of the CG Overlay District.

### **Project Overview**

8. The Property, which is rectangular in shape and measures approximately 35,558 square feet, is located in the northern portion of Square 700, with frontage on M Street, South Capitol Street, and Van Street. The Property is currently unimproved and utilized as a temporary seasonal surface parking lot for baseball games.
9. The Applicant proposes to develop the southern portion of the Property with a new 13-story residential building with frontage only on South Capitol Street and Van Street (no

frontage on M Street). Three levels of below-grade parking will be provided with access from Van Street. The building will have a maximum height of 130 feet, approximately 176,485 square feet of gross floor area, and a lot occupancy of approximately 88.2%. The building will be primarily masonry and glass, stepping back along South Capitol Street above the 11<sup>th</sup> floor, consistent with the requirements of the CG Overlay. The building's aesthetic relates to its surroundings in the southeast waterfront, engages the surrounding community context, creates a sense of place for the building's future residents, and connects with the area's growing amenities. These aspects of place are materialized in a palette that includes molded brick, glazed brick, granite, and metal panels. The molded brick has a strong tie to the neighborhood's industrial history and is used extensively as a strong masonry frame that ties all the building elements together. This framework allows the two façades at South Capitol and Van Streets to respond to their distinct neighborhoods.

10. As stated by the project architect at the public hearing, the building's South Capitol Street façade is formal and symmetrical, with a vertical expression that book-ends the building with strong brick towers. A metal panel system is used to stitch the two towers together through the courtyard façade, creating a dynamic, modern expression. At the ground level, the brick towers are joined together with townhouse units. These prominent brick and stone silhouettes are evocative of the surrounding neighborhood's traditional row houses. The townhouse expression provides individual identity and human scale, while providing an element of monumentality along South Capitol Street.
11. As further stated by the project architect, the Van Street façade takes its cues from the southeast waterfront neighborhood. This façade uses the same brick framework as the façade along South Capitol, thereby tying the façades together. Projections and niches utilize the modern industrial materials of glazed brick and metal panel systems to establish a dynamic elevation with a modern, industrial design motif. Townhouse units are provided on this façade as well. The building's main entrance is located along Van Street with a through-lobby to tie the South Capitol and Van Street entrances together in an amenity space intended to foster a sense of community for the residents.
12. The building will incorporate a number of elements to enhance its sustainability. The building will qualify for at least LEED-Gold certification/equivalent. The Applicant submitted a revised draft LEED checklist, identifying those elements and features the Applicant may pursue in satisfaction of its sustainability commitment. (Ex. 23-23A.) The building design also satisfies the Green Area Ratio ("GAR") requirements of Chapter 34 of the Zoning Regulations.
13. Pursuant to Z.C. Order No. 15-11, dated July 27, 2015, and effective on August 21, 2015, the Commission reviewed and approved the Applicant's request for a 10-story office building to occupy the northern portion of the Property. While the office building and the

residential building are contemplated to operate as separate buildings and will not be connected, they share a single record lot. Access to the parking garage for the office building will be provided under a portion of the residential building.

### **Description of the Surrounding Area and Zoning Classification**

14. The Property is located in the southern portion of Square 700, which is bounded by M Street on the north, South Capitol Street on the west, Van Street on the east, and N Street on the south. The Property is bounded to its south by private property (Lot 44), which is improved with a five-story brick self-storage building. An apartment house with ground- and second-floor retail uses has been approved by the Commission for the southern portion of Square 700, fronting on M Street. To the east of the Property across Van Street, in Square 701, the Commission has approved a mixed-use office, retail, and residential project spanning from M Street to N Street, S.E. Nationals Park is located to the immediate south of Square 700, across N Street, S.E.
15. The Property is zoned Capitol Gateway Overlay/Commercial Residential ("CG/CR"), as are all the adjacent properties south of M Street and west of First Street. East of First Street the properties are zoned Southeast Federal Capital Overlay Commercial Residential ("SEFC/CR"), and on the north side of M Street properties are zoned CG/C-3-C.
16. Within the CG Overlay, residential and nonresidential floor area on each individual parcel within the CR Zone District shall not exceed a maximum density of 8.5 floor area ratio ("FAR") on parcels for which a height of 130 feet is permitted by the Height Act of 1910 ("Height Act"), pursuant to 11 DCMR § 1602.1(a). As a result of the Property's frontage on South Capitol Street, 130 feet of height is permitted under the Height Act.
17. Section 1602 of the Zoning Regulations further provides that two or more lots within the CG Overlay may be combined for the purpose of allocating residential and nonresidential uses regardless of the normal limitation on floor area by uses on each lot. This allocation is accomplished by a combined lot development covenant approved by the District of Columbia and recorded in the land records.
18. In addition to the amount of density that may be transferred in accordance with 11 DCMR § 1602.1(a), the Commission may, at its discretion, grant an additional transfer of density of up to 1.0 FAR to or within Squares 700, 701, and 702, subject to an applicant addressing to the satisfaction of the Commission the objectives and guidelines of 11 DCMR §§ 1601 and 1604-1607, as applicable. To that end, the Applicant submitted this application for Commission review and approval. A combined lot development covenant has been recorded in the land records involving the necessary allocations of use and density to permit non-residential construction on the Property totaling up to 9.5 FAR.

## **Capitol Gateway Overlay District Design Requirements**

### The Project Meets the Requirements of 11 DCMR § 1605

19. The project is subject to the requirements of 11 DCMR § 1605 because the new building will have frontage on South Capitol Street within the CG Overlay. The Commission finds that the project meets the requirements of § 1605.
20. As shown in the architectural drawings, the building complies with the requirement that each new building or structure located on South Capitol Street shall be set back for its entire height and frontage not less than 15 feet. (11 DCMR § 1605.2.)
21. As shown in the architectural drawings, the building complies with the requirement that any portion of a building or structure that exceeds 110 feet in height shall provide an additional 1:1 setback from the building line along South Capitol Street. (11 DCMR § 1605.3.)
22. The building complies with the requirement that no private driveway may be constructed or used from South Capitol Street to any parking or loading berth areas in or adjacent to a building or structure constructed after February 16, 2007. As shown in the architectural drawings, the below-grade parking garage and the building's loading facilities will be accessed from Van Street, S.E. (11 DCMR § 1605.4.)
23. As shown in the final architectural drawings, the building complies with the requirement that a minimum of 60% of the street wall shall be constructed on the setback line for each new building or structure located on South Capitol Street. (11 DCMR § 1605.5.)

### The Project Meets the Requirements of 11 DCMR § 1610

24. Subsections 1610.1(b), 1610.1(c), 1610.1(d), 1610.1(f), and 1610.2 of the Zoning Regulations provide that new construction on a lot located within Square 700 or 701, north of the Ballpark site, on a lot abutting M Street or South Capitol Street, or on any lot that is the recipient of density through the combined lot provisions of 11 DCMR § 1602, requires the review and approval of the Commission. Subsection 1610.3 of the CG Overlay provides that in addition to demonstrating that the proposed building meets the standards set forth in 11 DCMR § 3104, an applicant requesting approval under the CG Overlay provisions must also prove that the proposed building meets the requirements of 11 DCMR §§ 1610.3(a) through 1610.3(f). Subsection 3104.1 of the Zoning Regulations provides that special exceptions should be granted when "the special exceptions 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." (11 DCMR § 3104.1.)

25. Subsection 1610.3 further provides that the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation of the proposed building must comply with the specific requirements set forth in that section, and must help achieve the objectives of the CG Overlay District, as set forth in 11 DCMR § 1600.2. The Commission finds that the proposed building meets the requirements of 11 DCMR § 1610 and is consistent with all of the applicable purposes of the CG Overlay.
26. The proposed building's height and density are allowed at this location, and the proposed use is consistent with the Property's designation on the Future Land Use Map. The residential uses contemplated by the project will help foster an appropriate mix of uses within the square and the surrounding area. (§ 1600.2(a).)
27. The CG Overlay provides for the establishment of South Capitol Street as a monumental civic boulevard. As shown in the Architectural Drawings, the design of the building, including the façade treatment and articulation, all further the monumental focus of South Capitol Street. (§ 1600.2(g).)
28. The proposed 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 neighboring property in accordance with the Zoning Regulations and Zoning Map. The Commission finds that the project assures development of the area with a mixture of uses and a suitable height, bulk, and design. (§ 1610.3(a).)
29. The proposed building will help achieve the desired mix of uses in the CG Overlay as set forth in §§ 1600.2(a) and (b), with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail, or service uses. The Commission finds that the new residential use will help achieve the goals of the CG Overlay. (§ 1610.3(b).)
30. The Commission finds that the height, bulk, and architectural design of the proposed building, as shown in the architectural drawings, will be in harmony with the context of the surrounding neighborhood and will have no effect on the existing street grid. (§ 1610.3(c).)
31. The Commission finds that the proposed building has been sited to minimize conflicts between vehicles and pedestrians. Access to the building's loading and parking facilities along Van Street will help minimize potential conflicts between vehicles and pedestrians. Where the parking and loading operations occur on Van Street, pedestrians will have an uninterrupted sidewalk with similar paving patterns to the typical Van Street sidewalks in

public space. The Applicant's CTR Report confirms that the project minimizes negative impacts to public space. (§ 1610.3(d).)

32. The Commission finds that the proposed building's façades have been designed to minimize unarticulated walls adjacent to public spaces through façade articulation. The building offers extensive façade articulation along South Capitol and Van Streets, in that they are distinctly and extensively articulated through irregular patterns, varying setbacks, and a mix of materials and fenestration. The southern, at-risk façade abutting the property to the south is also articulated with masonry banding.
33. The proposed project will be designed with sustainability features and will achieve LEED Gold equivalent/certification, such that the building will not have significant adverse impacts on the natural environment. (§ 1610.3(f))
34. This application was referred to the Office of Planning ("OP") and the District Department of Transportation ("DDOT") for review. (§ 774.6.)

#### **Variance Requests from the Lot Occupancy and Loading Requirements**

35. Subsection 1610.7 of the Zoning Regulations states that the Commission may hear and decide any additional requests for special exception or variance relief needed for the Property and that such requests shall be advertised, heard, and decided together with the application for review and approval for compliance with the CG Overlay provisions. Pursuant to this provision, the Applicant requests area variance relief from the lot occupancy and loading requirements of 11 DCMR §§ 634.1, 1601.1, and 2201.1.
36. The test for variance relief is three-part: (1) demonstration that a particular piece of property is affected by some exceptional situation or condition; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or substantial impairment of the zone plan. The Commission finds that variance relief is appropriate in this application.
37. The Commission finds that the Property fronts on three streets within the CG Overlay, including two primary axes which are the subject of extensive design control within the overlay. As such, the Property is exceptional in being in a very prominent location and acts as the "front door" to the near southeast neighborhood. The Property is subject to multiple required setbacks, percentage of street wall requirements, and prohibitions in terms of location of required loading and parking egress. These exceptional conditions establish a complex relationship among the design components within the building, including restricting where the core, service spaces, and parking and loading access may be located.

38. The exceptional nature of the Property is further demonstrated through the history of the Commission's review of the Property in Z.C. Case No. 09-22, wherein the Commission expressed its concurrence with the position of ANC 6D that the Property was uniquely sited and of exceptional importance to the neighborhood and, as such, required exceptional design. Moreover, pursuant to Z.C. Order No. 15-11, the Commission found that the Property was affected by an exceptional situation and condition in approving an office building to be located on the northern portion of the Property. (*See* Z.C. Order No. 15-11, Finding of Fact No. 49.)
39. The Commission finds that the strict application of the Zoning Regulations will result in a practical difficulty upon the Applicant in complying with the lot occupancy requirements. The Applicant proposes to have a lot occupancy of 88.2% where a maximum lot occupancy of 80% is permitted. The proposed building will be devoted exclusively to residential uses, and therefore the percentage of lot occupancy is determined at the ground level. As proposed, the ground level incorporates residential units, multiple building entrances (for the multi-family and the townhouse units), a lobby, recreation and service uses, and the parking and loading access points. Given the relatively narrow dimensions of the Property, which acts as a through-lot given the location of the approved office building, in addition to the ground-level operational spaces, building core, and the need to provide vehicular egress from Van Street, the Applicant is unable to provide any open space on the ground floor other than the required setback from South Capitol Street and court niches along Van Street, thus resulting in a lot occupancy of approximately eight percent more than allowed under the Zoning Regulations.
40. The Applicant, upon guidance from DDOT, is consolidating the curb cuts that provide access to the Property to a total of three cuts, leaving a single curb cut for the residential building to provide both parking and loading access. As a result, the loading is required to be provided as an off-shoot from the parking ramp, essentially in the center of the residential building's footprint. This location creates a number of inefficiencies within the building in terms of location of building core, stairways, lobbies, and entrances. Given these operational constraints, the Commission finds that strict compliance with the lot occupancy requirements creates a practical difficulty for the Applicant.
41. The Commission also finds that the strict application of the Zoning Regulations will result in a practical difficulty upon the Applicant in complying with the loading requirements of 11 DCMR § 2201.1. Subsection 2201.1 requires the following loading facilities: one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. Instead of a 55-foot-deep berth, the Applicant will provide a 30-foot-deep berth, thus requiring variance relief. As determined by DDOT, the Van Street right-of-way is too narrow to accommodate the requisite turning radius for a 55-foot truck under safe operations. Therefore, the Commission finds that it

is practically difficult for the Applicant to provide a loading berth that accommodates 55-foot trucks.

42. The Commission finds that the requested relief from the lot occupancy requirements can be granted without substantial detriment to the public good and without substantially impairing the zone plan. The proposed 88.2% lot occupancy will not result in any negative impacts on surrounding properties due to the significant setbacks and open courts that are required and will be provided. A significant courtyard garden is provided at the second level of the building (atop the loading area), where many high-rise buildings would typically measure lot occupancy, bringing that level very close to full compliance with the maximum occupancy requirement. Furthermore, above the fourth floor of the building, the building footprint further opens to a C-shaped courtyard, which provides an extensive amount of light, air, and open space, well in excess of the requirement.
43. The Commission also finds that the proposed loading facilities will not result in any negative impacts, since they will adequately serve the anticipated loading demand for the Property, given the size of the residential units. The single 30-foot loading berth will be sufficient to accommodate the anticipated amount of residential loading activity at the building. Moreover, the loading facilities will be coordinated through a loading management plan (as set forth in the CTR Report), which will ensure that move-ins and move-outs do not conflict with other residential deliveries to the building.

#### **Office of Planning Report**

44. By report dated October 26, 2015, OP recommended approval of the application. (Ex. 12.) In its report, OP noted that the application meets the CG Overlay goals for providing a preferred use, and meets the requirements for building form and massing. OP also noted that the application successfully addresses most of the evaluation criteria of the CG Overlay and recommended approval of the project subject to (i) improved environmental design and detail on the amount of green roof, and (ii) additional information about illumination on townhouses and elimination of internal inconsistencies in the plans. OP noted that it supported the lot occupancy and loading relief requested.
45. As shown in the Posthearing Submission, the Applicant responded to OP's two requests by (i) providing additional drawings showing location and extent of green roof, and (ii) providing rendering of proposed entrance lighting for townhouse units.

#### **DDOT Report**

46. By report dated October 26, 2015, DDOT stated that it has no objection to the application. DDOT noted that the Applicant provided a loading management plan that

appropriately addressed DDOT's concerns regarding truck backing movements, and that the proposed TDM measures are sufficiently robust to address the impacts expected from the project. The Applicant proposed the following TDM measures: (i) provide 60 long term bicycle parking spaces for the residential building, three more spaces than zoning requires; (ii) unbundle the cost of residential parking from the cost of lease or purchase; (iii) appoint TDM leaders (for planning, construction, and operations) at the residential building. The TDM leaders will work with residents in the building to distribute and market various transportation alternatives and options; and (iv) provide a public transit information screen in the residential lobby showing real-time information on nearby transit services.

47. In addition to the TDM measures, DDOT noted that the Applicant agreed to the following mitigations in Z.C. Order No. 15-11: (i) restrict northbound left turns on Van Street at M Street and install signage for a right-turn in, right-turn out, and (ii) restrict office and retail employees and retail customers from parking in the residential parking garage. DDOT also noted that the Applicant agreed to a loading management plan in Z.C. Case No. 15-11, as a condition in Z.C. Order No. 15-11, Decision No. 6.

#### **NCPC Report**

48. On November 12, 2015, a report from Marcel Acosta, Executive Director of the National Capital Planning Commission ("NCPC"), was received into the hearing record. (Ex. 22.) In that report, Mr. Acosta stated that the proposed building is consistent with the intent and requirements of the CG Overlay District, and would not be inconsistent with the Comprehensive Plan for the National Capital nor affect other federal interests.

#### **ANC Report**

49. By reports dated October 19, 2015 and November 4, 2015, ANC 6D reported that at its duly noticed meeting on October 19, 2015, it voted 4-0-2 to support the application. (Ex. 14, 16). The ANC's report noted that it was not opposed to the Applicant's request for variances from the lot occupancy and loading requirements. The ANC encouraged the Applicant to work in concert with other adjacent development projects to ensure that Van Street is paved in an attractive and consistent manner, and that new lighting is installed on Van Street. The ANC report noted that the Applicant agreed not to petition the District to designate any additional Residential Parking Permit ("RPP") blocks on the streets adjacent to the building, and to include in all condominium offering materials a statement that the Property is not eligible for RPP and is not on the RPP registry. The ANC noted its support for the project targeting the guidelines for LEED-Silver, but stated that it would prefer LEED-Gold or Platinum. The report also asserted the ANC's preference to see more residential units designated as affordable to households with a lower income. The ANC also requested that the Applicant reduce the glazing reflectivity

on the building's glass facades and add other measures to mitigate the risk to birds. Finally, the ANC report stated that the ANC expected the Applicant to create an effective construction management plan and submit the plan to the ANC before it is enacted.

### **CONCLUSIONS OF LAW**

1. The application was submitted pursuant to 11 DCMR §§ 1605 and 1610 for review and approval by the Commission, and pursuant to 11 DCMR § 1607 for variances from the lot occupancy and loading requirements. The Commission concludes that the Applicant has met its burden of proof.
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 Property.
3. Pursuant to 11 DCMR §§ 1605.1 and 1610.1, the Commission required the Applicant to satisfy all applicable requirements set forth in 11 DCMR §§ 1605.2 through 1605.5 and 11 DCMR §§ 1610.2 through 1610.7. Pursuant to 11 DCMR § 1610.7, the Commission also required the Applicant to meet the requirements for variance relief set forth in 11 DCMR §§ 3103, 634.1, 1601.1, and 2201.1. 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 CG/CR (Capitol Gateway Overlay/Commercial Residential) 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 Commission concludes that the proposed project will further the objectives of the CG Overlay District as set forth in 11 DCMR § 1600.2 and will promote the desired mix of uses set forth therein. The design of the proposed building meets the purposes of the CG Overlay and meets the specific design requirements of 11 DCMR § 1605.
6. No person or parties appeared at the public hearing in opposition to the application.
7. 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. The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” in § 13(d) of the Advisory Neighborhood Commissions Act of 1975 to encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n. 10 (D.C. 1978). The affected ANC in this case is ANC 6D. The Commission carefully considered ANC 6D's

recommendation for approval and concurs in its recommendation, and considered the issues and concerns stated in its reports.

8. With respect to the ANC's request regarding RPP restrictions, the Commission notes the Applicant has agreed not to petition the District to designate additional RPP blocks on the streets adjacent to the building, and to include in all condominium offering materials a statement that the Property is not eligible for RPP and is not on the RPP registry. This commitment has been made a condition of this Order.
9. Regarding the ANC's suggestions that the Applicant take certain actions with respect to the paving of Van Street, and enter into a construction management agreement, neither of these considerations pertain to whether the Applicant has met the design review and variance tests required by the Zoning Regulations. Thus, these issues and concerns ANC's are not legally relevant and are not entitled to great weight.
10. With respect to the ANC's preference for the Applicant to achieve a LEED-Gold or Platinum rating, the Commission notes that the building will qualify for at least LEED-Gold certification/equivalent. This commitment has been made a condition of this Order.
11. As to the ANC's requests regarding modifying the building's glazing to reduce its impact on birds, the Commission finds that the potential adverse effect of the building's glazing on birds will be small because of the building's urban location, the low reflectivity of the glass, and because the glass covers only a small percentage of the building. The Commission therefore does not think it is necessary to include additional mitigation.
12. 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 report and, as explained in this decision, finds its recommendation to grant the application persuasive.
13. Based upon the record before the Commission, including witness testimony, the reports submitted by the Office of Planning, 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 §§ 1605 and 1610 of the Zoning Regulations.

### 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. The term "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under the order shall be joint and several. If a

person or entity no longer holds title to the Property, that party shall have no further obligations under the order; however, that party remains liable for any violation of any condition that occurred while an owner. This approval is subject to the following guidelines, standards, and conditions:

1. The approval of the proposed development shall apply to Lot 48 in Square 700.
2. The project shall be built in accordance with the architectural drawings, dated December 3, 2015, as modified by the guidelines, conditions, and standards below. (Ex. 23A).
3. The overall density on the site shall not exceed 9.5 FAR as permitted pursuant to 11 DCMR § 1602, and pursuant to the Commission's approval of this application.
4. The Applicant shall implement the following transportation mitigation measures for the life of the project:
  - a. Restrict northbound left turns on Van Street at M Street and install signage for a right-in, right-out ("RIRO");
  - b. Prohibit office and retail employees and retail customers from parking in the residential parking garage; and
  - c. The Applicant shall not petition the District to designate additional RPP blocks on the streets adjacent to the building, and shall include in all condominium offering materials a statement that the Property is not eligible for RPP and is not on the RPP registry.
5. The Applicant shall implement the following TDM measures for the life of the project:
  - a. Provide 60 long-term bicycle parking spaces for the residential building;
  - b. Unbundle the cost of residential parking from the cost of lease or purchase;
  - c. Appoint TDM leaders for planning, construction, and operations at the residential building, who will work with residents in the building to distribute and market various transportation alternatives and options; and
  - d. Provide a public transit information screen in the residential lobby showing real-time information on nearby transit services.
6. The Applicant shall implement the following loading management measures for the life of the project:

- a. A loading dock manager will be designated by the building management (duties may be part of other duties assigned to the individual). He or she will coordinate with vendors and tenants to schedule deliveries to the loading dock, for 30 foot trucks (not delivery vans);
  - b. All deliveries will be permitted between 7:00 a.m. and 4:00 p.m. seven days per week, except when events occur at Nationals Park. Deliveries cannot be scheduled for the period between two hours when an event begins and one hour after an event is completed, including during the event itself (not including UPS/FedEx and similar deliveries);
  - c. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20- Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DOOT Truck and Bus Route Map ([godcgo.com/truckandbusmap](http://godcgo.com/truckandbusmap));
  - d. All tenants will be required to schedule deliveries that utilize the loading dock (any loading operation conducted using a truck 20' in length or larger);
  - e. The dock manager will schedule deliveries to ensure that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time; and
  - f. A flagger will be present whenever a vehicle is entering or exiting the loading dock to ensure pedestrian, bicycle, and vehicle safety with truck back-in and exiting maneuvers.
7. The Applicant shall not place billboard or similar advertising signage on the south elevation of the residential building.
  8. The project shall achieve a number of points equivalent to that required to achieve LEED-Gold certification.
  9. 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, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the buildings;

- b. To vary the final selection of exterior materials within the color ranges provided (maintaining or exceeding the same general level of quality) as proposed, based on availability at the time of construction; and
  - c. To make 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.
10. 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 identification, 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.

On December 14, 2015, upon the motion of Commissioner Miller, as seconded by Vice Chairperson Cohen, the Zoning Commission **APPROVED** the application and **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Peter G. May; Michael G. Turnbull, not having participated, not voting.)

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 January 15, 2016.

  
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ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
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SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING