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VIA HAND DELIVERY

Zoning Commission for
The District of Columbia
441 NW 4th Street, Suite 210
Washington, D.C. 20001

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**Re: Request to Re-Open Zoning Commission Case No. 06-14
Response to Issues Raised by the National Capital Planning Commission**

Dear Members of the Zoning Commission:

This letter is submitted on behalf of MRP Realty, LLC (the "Applicant") in support of Zoning Commission Case No. 06-14 (MRP Realty, LLC- Application for Consolidated PUD in Square 3584) (the "Case"). In order to respond to the written submission of the National Capital Planning Commission ("NCPC") filed with the Zoning Commission pursuant to Section 3025.4 of the Zoning Regulations, we respectfully request that the Zoning Commission re-open the record for the Case, as provided under Section 3024.5 of the Zoning Regulations, in order to accept and consider the information and documents contained herein prior to the Zoning Commission's final decision on the Case at its February 12th Public Meeting.

As stated above, this filing is in response to the NCPC action of January 4, 2007, which adopted the Executive Director's Recommendation (the "EDR"), dated December 28, 2006. NCPC concluded that:

1. By using measuring points along the elevated approach to the New York Avenue Viaduct, over the Metrorail tracks, the project is inconsistent with the Height of Buildings Act of 1910 (the "Height Act").
2. The height of the residential/hotel building raises security concerns for the Bureau of Alcohol, Tobacco, Firearms and Explosives Headquarters Building.
3. By locating entrances to the parking garage and loading docks immediately adjacent to the intersection of New York and Florida Avenues, the proposed design of the hotel/residential building would adversely affect this significant gateway to the city and diminish opportunities for locating a significant commemorative work in this area.

ZONING COMMISSION
District of Columbia

A. Compliance with the Height of Buildings Act of 1910

The Height Act provides that the height of a building is limited to the width of the street, avenue, or highway in its front, increased by 20 feet. D.C. Code § 6-601.05(a). However, no building may exceed 130 feet in height on a business street or avenue. D.C. Code § 6-601.05. The Height Act further states, "[i]f a building has more than 1 front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit the greater height." D.C. Code § 6-601.07. (Emphasis added.) The Corporation Counsel, now the Office of the Attorney General, is charged with enforcing the provisions of the Act. D.C. Code § 6-601.08.

In the subject case, the PUD site is located at the intersection of New York and Florida Avenues. The two buildings within the project are contiguous with and face both avenues. Because the grade of New York Avenue rises to cross over the rail yards east of the site and the grade of Florida Avenue drops to cross under the rail yards, the elevations along New York Avenue are higher than those along Florida Avenue. Therefore, in accordance with the Height Act, the measuring point for the height for each building are those points being the level of the curb and sidewalk opposite the middle of the front of the buildings on New York Avenue.

The Zoning Administrator¹ has confirmed that the application of the Height Act in the Case is consistent with the District's long-standing interpretation of the Height Act. Also, the Office of Planning has confirmed that its position on the application of the Height Act in the Case has not changed.

NCPC argues that New York Avenue should not be used as the measuring point because there are no entrances on the New York Avenue building facades. To support this position, the EDR cites the Cyril M. Harris *Dictionary of Architecture and Construction, Second Edition*, which defines "front" as "the most prominent face of a building and/or that fact which contains the main entrance." Based on this narrow definition, the EDR suggests that the plaza area be used to measure the building heights because the primary vehicular and pedestrian access to the PUD will be from the plaza. On page 10, the EDR recommends that the buildings within the PUD be "redesigned to an appropriate height from an appropriate measuring point."

This recommendation has no statutory basis, provides no legally sustainable standard, and is inconsistent with the District's application of the Height Act where a building fronts on more than one street.

¹ At its special public meeting for Case No. 94-01A, held on July 24, 2006, the Zoning Commission affirmed that the Zoning Administrator is the "ultimate arbiter of the Height Act." In that case, the Zoning Commission approved the PUD application, notwithstanding the concerns raised by NCPC, recognizing that the final decision regarding compliance with the Act rests with the Zoning Administrator.

In Zoning Commission Case No. 05-22, the PUD site fronted on three streets -- 14th Street, Florida Avenue and Belmont Street. The principal entrance to the development was 14th Street, and 14th Street, as the widest street, was used for purpose of determining the maximum permitted height of the building. The height of the building was measured at the middle of the front of the building on Belmont Street, which has a higher elevation than 14th Street and Florida Avenue. In that case, NCPC, by delegated action of the Executive Director dated December 30, 2005, concluded that the PUD "would not be inconsistent with the Comprehensive Plan nor would it have any adverse impact on any federal interests."

The EDR also asserts that the Applicant acted inconsistently with the intent of the Height Act by using a measuring point along the elevated embankment/approach to the New York Avenue Viaduct crossing the Metrorail tracks.

In determining its points of measurement, the Applicant followed the precise language of the Height Act. As stated above, the grade of New York Avenue rises to cross over the rail yards east of the site. The measuring points are still taken from grade; the viaduct that crosses over the tracks does not start until after the eastern edge of the PUD site. Again, the Zoning Administrator and the Office Planning agree that said application is consistent with the Height Act. Furthermore, this issue was brought before the Zoning Commission and discussed during the set down of the application and during the public hearing on the Case. (See Office of Planning Set Down Report dated, June 2, 2006, pages 5-6 and Office of Planning Final Report, dated November 20, 2006, pages 5-7.)

In light of the foregoing, we submit that the PUD complies with the long-standing application of the Height Act by the District of Columbia. However, as depicted in the enclosed drawings, the Applicant has redesigned the project to include direct pedestrian access to the buildings from New York Avenue as a way of further animating New York Avenue (in addition to the widening of the sidewalks and provision of plantings and landscaping proposed for the project), and to rebut NCPC's contention that the facades along New York Avenue do not constitute building fronts.

B. Security Concerns for Bureau of Alcohol, Tobacco, Firearms and Explosives Headquarter Building

Since the NCPC meeting of January 4th, the Applicant has met with representatives from the Bureau of Alcohol, Tobacco, Firearms and Explosives (the "Bureau") and the General Services Administration. The representatives did not object to the height of the buildings; however, safety concerns were raised by the Bureau as a result of persons in the residential/hotel building having an unobstructed line of sight to the plaza in the Bureau's headquarters. In response, the Applicant proposes, if acceptable to the Zoning Commission, to install a glass screen, with a setback of at least one to one from the edge of the roof, around that portion of the pool area on the rooftop of the residential/hotel building facing the Bureau's plaza; a railing will also be installed to block access to the edge of the roof. These enhancements are shown on Sheet 506S-a of the enclosed drawings. Also, the Applicant agrees to the following as conditions of the PUD approval: (1) if requested by the Bureau within two months of the Zoning

Commission's final action approving the PUD, the Applicant agrees to revise the PUD plans to remove or enclose the balconies on the residential/hotel building that face the Bureau's headquarters; and (2) all windows on the residential/hotel building that face the Bureau's headquarters shall be designed to open in a manner that prevents an unimpeded line of sight to the Bureau's plaza. Representatives from the Bureau are agreeable to the proposed security solutions and are supportive of the project overall.

C. Location of Parking Garage and Loading Dock Near Florida and New York Avenue Intersection

The Applicant coordinated the location of the parking and loading driveways with the District Department of Transportation and the Office of Planning prior to the Zoning Commission's public hearing on the PUD application. Both agencies supported the location of the parking and loading drives, and determined that the proposed locations would have the least impact on the traffic and pedestrian circulation and, at the same time, accommodate new retail uses along Florida Avenue adjacent to the interior plaza of the project. The driveway entrance off New York Avenue is flush with the residential/hotel building and is designed to be right-in, right-out only. The loading dock entry along Florida Avenue is head-in, head-out only and that entrance is also flush with the residential/hotel building. Should a commemorative monument be installed, the angle of site from the monument would be past the PUD entrances, not at them. Notwithstanding, in order to address NCPC's concerns regarding the project's effect on the future installation of a significant commemorative work, the Applicant agrees to enhance the interior of the parking entrance on New York Avenue so that it includes architectural and design elements similar to those on the exterior of the project. Also, the Applicant is amenable to a condition in the Zoning Commission Order that requires the garage door for the Florida Avenue loading area to remain closed, other than to provide immediate vehicular ingress and egress. These enhancements to the parking entrance are noted on Sheet 501S of the enclosed drawings, and the perspectives of the garage door on Florida Avenue are illustrated on Sheets 526, 527A and 527B of the enclosed drawings and have been discussed with the Office of Planning.

Conclusion

As mentioned at the beginning of the public hearing on the Case, the Applicant originally intended to develop the PUD site strictly as an office project, as permitted as a matter of right under the existing C-3-C zoning. The office design included a 90-foot height from the New York Avenue measuring pints, with a resulting height from Florida Avenue of approximately 130 feet – not significantly different from the Florida Avenue front of the building proposed for the PUD. The original matter of right project had over 200,000 square feet more office than the PUD, but no residential or hotel uses. If the Zoning Commission confirms its proposed action with a final approval, the Applicant intends to build the mixed use PUD.

Zoning Commission

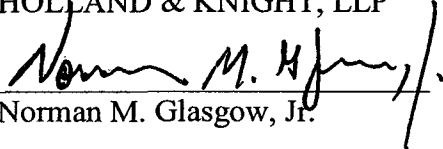
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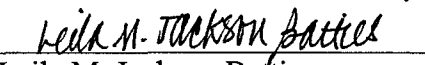
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In light of the foregoing, we respectfully request that the Zoning Commission accept this filing and re-open the record for the Case for its receipt, give due consideration to the discussion and attachments herein, and issue a final decision in favor of the PUD application.

Sincerely,

HOLLAND & KNIGHT, LLP


Norman M. Glasgow, Jr.


Leila M. Jackson Batties


Steven E. Sher, Director of Zoning
and Land Use Services

cc: Advisory Neighborhood Commission 5C (via U.S. mail, w/ enc.)
Ms. Jennifer Steingasser, Office of Planning (via hand delivery, w/ enc.)
Alan Bergstein, Esq., Office of the Attorney General (via hand delivery, w/ enc.)
Mr. Bill Crews, Department of Consumer Affairs (via hand delivery, w/ enc.)