GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION OF THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 06-46
Z.C. Case No. 06-46
Capitol Gateway Overlay Review
WMATA, MR N Street S.E, LLC, and MR Ballpark 5 LLC

Pursuant to notice, the Zoning Commission of the District of Columbia (the "Commission") held a public hearing on January 11, 2007 to consider an application for property owned by the Washington Metropolitan Area Transit Authority ("WMATA"), MR N Street Southeast LLC, and MR Ballpark 5 LLC for review and approval of a new development pursuant to the Capitol Gateway Overlay District provisions ("CG Overlay District Review") set forth in § 1604 of the D.C. Zoning Regulations (the "Zoning Regulations"), Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The property that is the subject of this application consists of Lots 3, 98-118, 144-147, 161, 162, 167, 815, and 824 in Square 701 and portions of the public alley in Square 701 closed on an emergency basis pursuant to Closing of Portions of a Public Alley System on the West Side of Square 701, S.O. 06-3392, Emergency Act of 2006, effective December 28, 2006 (D.C. Act 16-657) (the "Emergency Alley Closing Legislation"). MR N Street Southeast LLC and MR Ballpark 5 LLC, affiliates of Monument Realty LLC, are collectively referred to as the "Applicants."

In addition, the Applicants sought approval, pursuant to § 1604.9, for: (1) a special exception from the setback requirements for roof structures in the CR District; (2) a variance from the private residential recreation space requirements of the CR District; and (3) a variance from the loading requirements of the CR District. On November 10, 2006, the Commission issued its Notice of Proposed Rulemaking in Z.C. Case No. 05-10 for text and map amendments to the provisions for the Capitol Gateway Overlay District. In response to the Commission's Notice of Proposed Rulemaking in Z.C. Case No. 05-10, the Applicants, pursuant to § 1604.9, also requested: (1) a variance from the step back requirements of proposed § 1607.2; (2) a variance from the ground floor preferred uses requirements of proposed § 1607.3; (3) a variance from the requirements of proposed § 1607.4 for street frontage along Half Street, S.E.; and (4) a variance from the minimum floor-to-ceiling clear height requirements of § 1607.5. The Commission considered the application pursuant to Chapter 30 of the Zoning Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

ZONING COMMISSION
District of Columbia
CASE NO.
EXHIBIT NO.
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District of Columbia
CASE NO.06-46A
EXHIBIT NO.1A

FINDINGS OF FACT

Application, Parties, and Hearing

1. On November 2, 2006, the Applicants filed an application for review and approval of new development pursuant to the CG Overlay District Review for property located in the Southeast quadrant of Washington, D.C. and generally bounded by M Street on the north, Half Street on the west, N Street on the south, and Cushing Place on the east. Consisting of approximately 102,494 square feet of land, the site includes Lots 3, 98-118, 144-147, 161, 162, 167, 815 and 824 in Square 701 and portions of the public alley in Square 701 closed pursuant to the Emergency Alley Closing Legislation (the "Subject Property"). The site is presently zoned CG/CR. Pursuant to § 1604 of the Zoning Regulations, the Applicants are seeking review and approval of the proposed development under the CG Overlay District Review, a special exception from the setback requirements for roof structures in the CR District, and variances from the private residential recreation space, loading, proposed step back, proposed ground floor preferred uses, proposed street frontage along Half Street, and proposed minimum floor-to-ceiling clear height provisions of the Zoning Regulations.

2. The purposes of the CG Overlay District that are relevant to the proposed development include:

   a. 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;

   b. Encouraging a variety of support and visitor-related uses, such as retail, service, entertainment, cultural, and hotel or inn uses;

   c. Requiring suitable ground-level retail and service uses and adequate sidewalk width along M Street, S.E., near the Navy Yard Metrorail Station; and

   d. Providing for the development of Half Street, S.E. as an active pedestrian-oriented street with active ground floor uses and appropriate setbacks from the street façade to ensure adequate light and air and a pedestrian scale.

3. After proper notice, the Commission held a hearing on the application on January 11, 2007. Parties to the case included the Applicants and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the property is located.

4. At its duly noticed meeting held on January 8, 2007, ANC 6D voted 4-0-2 in support of the application for CG Overlay District Review. In its January 9, 2007 report, the ANC

found that the project meets the architectural criteria set forth in the CG Overlay with respect to height, mass, and setbacks and is consistent with the objective of creating a lively and welcoming stadium district.

5. Expert witnesses appearing on behalf of the Applicants included: Robert Sponseller of Shalom Baranes Associates, Jordan Goldstein of Gensler, John Fitch of Landscape Architecture Bureau, Steven Sher of Holland & Knight, and Daniel Van Pelt of Wells and Associates.

6. Uwe Brandes of the Anacostia Waterfront Commission ("AWC") appeared before the Commission as a person in support of the application. Mr. Brandes expressed AWC's strong and enthusiastic support for the application. Mr. Brandes noted that there are several new buildings along M Street and within the Capitol Gateway (CG) Overlay, but none have the attention to detail that the Applicants present in their application. Mr. Brandes pointed out that the building design celebrates pedestrian movement along Half Street. Mr. Brandes also stated that the D.C. Sports and Entertainment Commission is responsible for designing a circulation plan for baseball game days.

7. At the conclusion of the hearing, the Commission directed the Applicants to submit the following: (1) revised articulation of how the Applicants meet their burden of proof for special exception and variance relief; (2) an interim plan for Half Street prior to construction of the ultimate streetscape plan and a description of the traffic plan for game days; (3) an explanation of the design and operation of Monument Place and the intersection of Half Street and Monument Place; (4) an evaluation of the roof structure located on the hotel roof; (5) a description and study of the location of the elevator for the parking garage to street level; (6) a confirmation as to whether the Applicants will provide showers for the office tenants in response the District Department of Transportation ("DDOT") Report; (7) a description of sustainable building design features based on LEED certification categories likely to be incorporated in to the proposed development; (8) the likelihood of moving the hotel lobby to the first floor; (9) status report regarding DDOT approval of proposed street lighting; and (10) an explanation of signage at the northeastern corner of the site and on the roof of the South Building. By submission dated January 25, 2007, the Applicants addressed the areas identified by the Commission as requiring supplemental information.

8. At its public meeting on February 12, 2007, the Commission took proposed and final action, by a vote of 5-0-0, to approve the plans submitted into the record and all but one of the relief requests. The Commission denied that portion of the request for relief from the requirements of proposed § 1607.2 to permit a four-foot setback, instead of the required 20-foot setback, from the building line along Half Street.

Project Overview

9. The Applicants propose to develop the Subject Property with a 762,680-square-foot mixed-use development consisting of residential, office, hotel, and retail uses. The proposed development includes two buildings on a single record lot: (1) the north office building with ground floor retail (the "North Building") and (2) the south residential building containing two wings of residential use, a hotel and ground floor retail (the "South Building"). The two buildings will be separated by a private driveway. For floor area ratio ("FAR") purposes, the proposed development will consist of approximately 105,560 square feet of hotel use, 51,010 square feet of retail use, 320,100 square feet of residential use, and 277,600 square feet of office use.

10. Pursuant to § 1602.1 of the Zoning Regulations, the Applicants will transfer approximately 49,680 square feet of floor area from Lots 33, 37-39, 43, 45, 46, 802, 803, 841, 850, and 868 in Square 700 to the Subject Property in order to achieve density of approximately 7.44 floor area ratio ("FAR") and a building height of 110 feet. The Applicants have also devoted street frontage at the ground floor, exclusive of the entrance to the Navy Yard Metro Station and building entrances, to preferred retail use along M Street and Half Street.

11. The proposed development will provide 264 parking spaces for the residential use and 279 parking spaces for the hotel, retail, and office uses. The proposed development will also provide one 55-foot loading berth, six 30-foot loading berths, and two 20-foot service/delivery loading spaces.

Description of the Surrounding Area

12. The proposed development is surrounded by a variety of uses. Immediately across N Street to the south will be one of the two parking garages serving the baseball stadium, which is currently under construction. To the north of the site, across M Street, a new office building is nearing completion. To the northeast, a proposed development consisting of a new twelve-story office building with ground floor retail has been approved by the Commission under the CG Overlay District Review. A development consisting of a mixed-use office and residential building with ground floor retail is being considered for the eastern portion of Square 701. The WMATA bus garage is west of the Subject Property across Half Street.

Renovation and Expansion of the Navy Yard Metrorail Station

13. One of the major components of the proposed development is the renovation and expansion of the Navy Yard Metrorail Station located at the northwestern corner of the site. The Navy Yard Metrorail Station will be updated with a more welcoming entrance that includes additional gates and fare-card machines at street level. The Applicants

testified that the renovation and expansion of the Navy Yard Metrorail Station must be complete by April 2008, in order to accommodate Opening Day for the Washington Nationals at the baseball stadium. The renovation of the Navy Yard Metrorail Station will enhance the pedestrian experience around the baseball stadium and within the proposed development. The renovation and expansion also provide an alternative means of transportation for baseball patrons and District residents. As the Applicants stated in their written materials and testimony at the public hearing, the Navy Yard Metrorail Station limits the amount of gross floor area the Applicants can devote to preferred uses at the ground floor level, which also affects the amount of street frontage for preferred uses along Half and M Streets.

Ground Floor Preferred Uses

14. In complying with the provisions of the CG Overlay District, the Applicants have incorporated preferred uses at the ground floor level throughout the proposed development. The Applicants have devoted 56.3%, or 51,010 square feet, of the gross floor area at the ground floor to retail and preferred uses. The Applicant's allocation of preferred uses at the ground floor is limited by the renovation and expansion of the Navy Yard Metrorail Station and the building entrances that access uses that begin at the second floor. The Navy Yard Metrorail Station and the extension from Cushing Place to N Street, required as part of the alley closings that unified the site, account for 11,400 square feet of the gross floor area at the ground floor.

15. The Applicants have provided minimum floor-to-ceiling clear heights for all of the ground floor preferred uses except in the spaces labeled as Retail 7, Retail 5a, and back of house spaces on Sheet A13 of the Architectural Plans and Elevations, dated January 25, 2007 (the "Architectural Plans and Elevations"), which are identified as "Exhibit A" of the Applicants' post-hearing filing. The Applicants will provide a minimum floor-to-ceiling height in Retail 7 of 13 feet, to accommodate the slope in the site that occurs at Retail 7. The Applicants will provide a minimum floor-to-ceiling clear height of 11 feet, 6 inches at the ground floor for Retail 5a, in order to accommodate the placement of the main hotel lobby and bar on the second floor. The Applicants propose to construct in Retail 5a an exterior, covered stair connecting the second floor directly to the street in order to create a lively, attractive atmosphere for hotel guests and other patrons. The location of the hotel lobby and bar above Retail 5a requires that the hotel lobby and bar have clear ceiling heights taller than the typical clear ceiling height of 9 feet, 8 inches which are found on the second floor of the South Building. The Applicants also will provide a minimum floor-to-ceiling clear height of 11 feet for back of house space that contains large mechanical equipment (such as kitchen exhausts and other equipment associated with restaurant use) and for back of house space located below residential space.

Requested Areas of Relief: Special Exceptions

Setback Requirements for Roof Structures in the CR District

16. The Applicants requested special exception relief pursuant to § 411 of the Zoning Regulations to permit roof structures facing the interior courts of the building that do not meet the setback requirements for roof structures in the CR District. The Applicants will locate three mechanical penthouses on the roof of the residential building. All setback requirements from Half, M, and N Streets, S.E. will be met.

17. The Applicant's land use expert, Steven Sher, testified that Applicants' compliance with the roof structure regulations is impractical because of the size of the building lot, the "J" shaped footprint of the South Building, the required setbacks and step backs along Half Street, and the need for three separate cores to accommodate the hotel use and the residential uses located on two separate wings of the South Building. Mr. Sher explained that, if the Applicants were to meet all the setback requirements of the roof structure regulations, the Applicants would not have sufficient room to accommodate all necessary rooftop functions, such as housing mechanical equipment, nor would the Applicants meet the step back requirements of the proposed CG Overlay provisions relating to Half Street, S.E.

18. Mr. Sher stated that the proposed roof structures will not impair the intent and purpose of § 400.7 of the Zoning Regulations and will not adversely affect the light and air of adjacent buildings. The deviations from the Zoning Regulations will now only be located along the walls of the interior court of the South. The interior court will be surrounded by the proposed development and, thus, not providing a setback for exterior walls facing the interior courts will not adversely affect the light and air of the adjacent buildings.

Step Back Requirements on Half Street, S.E.

19. As of the date of this Order, there are no specified standards for review for a special exception for step backs that deviate from the step back requirements of proposed § 1607.2, other than compliance with § 3104. The Applicants, pursuant to proposed § 1607.2, requested special exception relief from the step back requirements to permit a 12-foot step back above a height of 80 feet along Half Street. Mr. Sher testified that the requested special exception is in harmony with the general purpose and intent of the Zoning Regulations and the Zoning Maps. The 12-foot step back will provide reasonable apartment depths on the 8th, 9th, and 10th floors, which will be lost if the Applicants are required to comply with proposed § 1607.2's minimum step back of 20 feet at a height of 65 feet. The 4-foot setback is an architectural marker that will provide compositional relief to an otherwise flat façade. The requested special

exception from the step back requirements on Half Street will not adversely affect the use of neighboring property.

Requested Areas of Relief: Variances

20. The Applicants, pursuant to § 1604.9, requested: (1) a variance from the private residential recreation space requirements of the CR District; (2) a variance from the loading requirements of the CR District; (3) a variance from the step back requirements of proposed § 1607.2; (4) a variance from the ground floor preferred uses requirements of proposed § 1607.3; (5) a variance from the requirements of proposed § 1607.4 for street frontage along Half Street, S.E.; and (6) a variance from the minimum floor-to-ceiling clear height requirements of § 1607.5. The Applicants withdrew their request for a variance from the percentage of lot occupancy requirements.

Uniqueness of the Property

21. The Applicants explained, in their pre-hearing and post-hearing filings, as well as in their testimony before the Commission, that the Subject Property is unique due to its large size, the entrance to the Navy Yard Metrorail Station located on site, and the need to comply with the provisions of both the CG Overlay District and the CR District. The Subject Property is a large site that fronts on both M Street and Half Street. It is required to comply with both the CG Overlay provisions for buildings, structures, and uses on M Street and the CG Overlay provisions for buildings, structures, and uses on Half Street. The presence of the Navy Yard Metrorail Station limits the design and allocation of uses within the proposed development. Thus, the Applicants have met their burden of showing that the property is unique.

Private Residential Recreation Space Requirements of § 635

22. The private residential recreation space provisions of the Zoning Regulations require that the Applicants devote an area equal to 15% of the residential gross floor area (or 48,000 square feet) to private residential recreation space. The proposed development devotes approximately 4,500 square feet (or 1.5% of the residential gross floor area) to private residential recreation space. Compliance with the private residential recreation space requirement would require the Applicants to devote 43,500 square feet of gross floor area designated to residential units or preferred retail uses to private residential recreation space. A change in the allocation of gross floor area devoted to residential units will require that the Applicants reduce the size and number of residential units and substantially alter their provision of retail, residential, and hotel uses in order to provide the required amount of private residential recreation space.

23. On January 7, 2007, the Commission took final action to repeal the residential recreation space requirements of the Zoning Regulations. Thus, the Applicants will not be required to comply with § 635 of the Zoning Regulations.

Loading Requirements of § 2201

24. The loading provisions of the Zoning Regulations require that the Applicants provide two 55-foot loading berths, five 30-foot loading berths, and four 20-foot service/delivery spaces. The proposed development provides one 55-foot loading berth, three 30-foot loading berths, and two 20-foot service/delivery space for the residential building and three 30-foot loading berths for the office building. Compliance with the loading requirements would force the Applicants to eliminate a portion of the ground floor area devoted to preferred uses and to alter their provision of proposed uses.

25. In their pre-hearing filing, the Applicants submitted a traffic impact study. That traffic impact study found that the number of loading berths required by the Zoning Regulations does not correspond with the demand in a mixed-use development nor do the regulations reflect consideration of how and when loading berths may be shared among the various uses. The traffic impact study concluded that the Applicants' proposed provision of loading berths and service/delivery spaces should adequately meet the needs of the proposed uses. The Applicants also stated that DDOT had no objection to this area of relief. Thus, a variance from the loading requirements will not create a substantial detriment to the public good nor will it substantially impair the zone plan.

Step Back Requirements of Proposed § 1607.2

26. The proposed step back provisions of the CG Overlay require that any portion of a building or structure that exceeds 65 feet in height must provide a minimum step back of 20 feet in depth from the building line along Half Street, S.E. The Applicants requested a variance from the step back requirements to permit a 4-foot setback for 17 linear feet at the northern end of the hotel facing Half Street. The 4-foot setback will serve as an architectural marker that provides compositional relief to the building façade.

27. The Applicants explained that strict application of the step back provisions of the CG Overlay would require the Applicants to develop alternative means for creating compositional relief for an abnormally long building façade, but this explanation is insufficient to meet the variance test.

Ground Floor Preferred Uses of Proposed § 1607.3

28. The Applicants requested a variance from proposed § 1607.3, which requires that each new building shall devote not less than 75% of the gross floor area of the ground floor to retail service, entertainment, or arts uses. The Applicants testified that compliance with proposed § 1607.3 would require the Applicants to eliminate access to residential, hotel, and office uses and the extension of Cushing Place to N Street.

29. The proposed development will provide 56.3%, or 51,010 square feet, of gross floor area of the ground floor to preferred uses. A portion of the gross floor area of the ground floor will be devoted to lobby space for residential, hotel, and office uses, which start at the second floor. Of the difference between the required 75% and the provided 56.3% of gross floor area of the ground floor to preferred uses, 11,400 square feet will be devoted to the Navy Yard Metrorail Station entrance and the extension of Cushing Place to N Street.

Street Frontage along Half Street Requirements of Proposed § 1607.4

30. Pursuant to proposed § 1607.4, preferred uses must occupy 100% of the building's street frontage along Half Street, S.E., except for space devoted to building entrances or required to be devoted to fire control. Compliance with proposed § 1607.4 would create a practical difficulty for the Applicants, because the Applicants have no control over the amount of space devoted to the Metrorail Station entrance, which occupies 17% of the street frontage along Half Street.

Minimum Floor-to-Ceiling Clear Height Requirements of Proposed § 1607.5

31. The Applicants have requested relief from the minimum floor-to-ceiling clear heights for ground floor preferred uses requirement of proposed § 1607.5 to provide floor-to-ceiling clear heights of 13 feet in the retail space labeled "Retail 7" on the Architectural Plans and Elevations, 11 feet, 6 inches in the retail space labeled "Retail 5a" on the Architectural Plans and Elevations, and 11 feet in back of house space located below residential space. Retail 7 and Retail 5a can be found on Sheet A1 of the Architectural Plans and Elevations. The Applicants testified that compliance with proposed § 1607.5 would result in the loss of one floor due to the maximum building height of 110 feet and would require the Applicants to change their mixed-use program.

32. Proposed § 1607.5 requires that the minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses be 14 feet. A floor-to-ceiling clear height of 13 feet is provided in Retail 7, because the site slopes along N Street. The retail areas to the west and east of Retail 7 will have floor-to-ceiling clear heights in excess of 14 feet.

33. Retail 5a will have a floor-to-ceiling height of 11 feet, 6 inches at the ground floor, in order to accommodate the placement of the main hotel lobby and bar on the second floor. The Applicants propose to construct an exterior, covered stair connecting the second floor directly to the street in order to create a lively, attractive atmosphere for hotel guests and other patrons. Because the hotel lobby and bar are intended to be lively, attractive places, the ceiling heights for the hotel lobby and bar are taller than the typical ceiling height of 9 feet, 8 inches found on the rest of the South building's second floor. The additional ceiling height has been transferred from the ground floor area below the hotel to the hotel lobby and bar on the second floor.

34. A floor-to-ceiling height of approximately 11 feet is provided for back of house space located below residential space and back of house space that stores large air handling equipment and kitchen exhausts. Storage facilities, kitchens, administrative offices, and other service areas associated with preferred uses are considered "back of house space." The Applicants have provided a section showing back of house space on Sheet A19 of the Architectural Plans and Elevations.

35. The proposed development requires a floor-to-ceiling clear height of approximately 11 feet for back of house space for two reasons. First, residential space requires a significant amount of mechanical equipment, which must be located below the residential space. Thus, a portion of the ceiling height for ground floor preferred uses must be devoted to equipment that serves the residential uses. Second, a portion of the ground floor preferred uses will require additional space for larger mechanical equipment, such as kitchen exhausts and other equipment associated with restaurant use. The size of mechanical equipment varies depending on the type of use and type of mechanical equipment selected.

Applicant's Responses to Areas Identified as Requiring Additional Information

Design and Operation of Monument Place

36. In response to the Commission's request for additional information, the Applicants, in their post-hearing filing dated January 25, 2007, have provided more information on the design and operation of Monument Place, a new 30-foot wide east-west connection, located between the office and residential buildings. Monument Place provides for vehicular and pedestrian circulation between Half Street and Cushing Place.

37. The 30-foot width of the connection includes a 4-foot pedestrian zone adjacent to the North Building, a 12-foot drive line, an 8-foot vehicular lay-by lane for the hotel and a 6-foot pedestrian zone adjacent to the South Building. The pedestrian zones are demarcated with a line of bollards that serve as a protective barrier for pedestrians and the buildings. Pedestrians will use Monument Place to access the retail elevators and the hotel entrance.

38. The vehicular circulation program is designed to be one-way east bound, from Half Street to Cushing Place. The one-way vehicular circulation program provides a number of benefits to the proposed development. It enhances pedestrian safety by providing unobstructed views of pedestrians from Half Street. The width of Monument Place is minimized in order to maximize the retail frontage and the amount of natural light to the hotel and office uses. The lay-by zone as designed minimizes the traffic impact on Half Street and Cushing Place.

LEED Certification Standards

39. The Applicants in their post-hearing filing have submitted a summary of the sustainable design features based on LEED certification categories that are likely to be incorporated into the proposed development. The Applicants also stated that at least 30 percent of the roof areas for the proposed development will be green roofs. Those green roofs will include a sorghum green roof system located on the penthouse roofs and a green roof over at least half of the central courtyard located at the second floor.

Proposed Streetscape & Interim Plan for Half Street

40. The Commission asked the Applicants to meet with DDOT regarding its approval of the proposed streetscape plan and to develop an interim plan for Half Street, S.E. As stated in their post-hearing filing, the Applicants and their design team met with representatives of DDOT to review the proposed streetscape improvements included in this submission. DDOT was represented by members of its Ward 6 Transportation Planning team, Anacostia Waterfront Initiative ("AWI") team, and Traffic and Safety Division.

41. At that meeting, the Applicants presented their vision for Half Street, which included a discussion of grading, paving, street furniture, lighting, and pedestrian and vehicular circulation. The Applicants also explained key design elements such as the materials to be used, the elimination of curbs in the street section, the proposal of a raised section at the intersection of N and Half Streets, drainage, and planted storm water retention beds.

42. Representatives from DDOT noted that the proposed materials and street furniture deviated from AWI standards and that DDOT's position is that the Applicants would be responsible for the maintenance of those non-standard elements. In response to DDOT's position, the Applicants have identified standard DDOT pavers that will be incorporated into the current design.

43. The Applicants, in their post-hearing filing, provided an interim plan for Half Street on Sheets L2 through L4 of the Architectural Plans and Elevations. As of Opening Day

for the Nationals, April 2008, construction of the Metrorail station expansion will be complete. However, the Applicants' office building above the Metrorail station and the residential buildings at the southern end of Half Street will remain under construction during the first season of play at the new stadium. The Applicants intend to provide a covered walkway in the eastern curb lane of Half Street between M and N Streets during this first season. The Applicants anticipate that, by April 2009, construction of the buildings will be complete and the street paving will be in place for the eastern pedestrian zone and street area from east trench drain to west trench drain.

Traffic Plan for Game Days

44. At the public hearing, the Commission asked the Applicants to provide information concerning the traffic plan for game days. The Applicants, in their post-hearing submission, stated that they have been in contact with DDOT, the Sports and Entertainment Commission ("SEC"), and Gorove/Slade Associates, the traffic consultant developing the new Ballpark Traffic Operations Control Plan ("Ballpark TOCP"), to acquire information regarding the new Ballpark TOCP. The Applicants reported that, based on communication with DDOT and Gorove/Slade Associates, a draft Ballpark TOCP is not expected until April 2007. The Applicants stated that they will continue to coordinate with DDOT and the SEC as the Ballpark TOCP is developed.

Description and Study of the Retail Elevator

45. The Commission requested that the Applicants provide a description of the elevator from the parking garage to street level and study the location of that elevator. In their post-hearing submission, the Applicants describe the elevator as a way to transport guests from the parking garage directly to preferred uses located at the ground floor. The Applicants also have completed a study of the location of the elevator and have relocated the elevator from its original location along Half Street to Monument Place. The Applicants explained in their post-hearing submission that the placement of the elevator along Monument Place will provide additional street frontage for preferred uses along Half Street.

Location of the Hotel Lobby

46. The Commission asked the Applicants to provide information regarding the likelihood of relocating the hotel lobby to the first floor. In their post-hearing submission, the Applicants stated that the hotel lobby will remain at the second floor. The Applicants have proposed to construct an open, interior stair connecting the ground floor to the second floor in order to create a lively, attractive atmosphere for hotel guests and other patrons. The open, interior stair will also enhance the pedestrian experience as well as the streetscape.

Showers for Office Tenants

47. In response to the DDOT report requesting that the proposed development provide shower facilities for the employees of and visitors to the commercial component, the Commission requested that the Applicants confirm whether or not they would provide shower facilities for the office building. In their post-hearing submission, the Applicants stated that they will rough in the plumbing for shower facilities and leave to the office tenants the decision as to whether the shower facilities should be built out.

Restudy of Roof Structure Located on the Hotel Roof

48. The Commission asked the Applicants to restudy the roof structure located on the hotel roof. The Applicants have redesigned the penthouse structure located on the low roof of the hotel to minimize the visual impact of the penthouse structure. The penthouse structure has been reduced in height from 15 feet to 6 feet. The larger mechanical equipment has been relocated to locations within the South Building. The penthouse structure is set back a distance greater than 6 feet from all exterior walls and, therefore, complies with the zoning provisions concerning setbacks.

Signage at the Northeastern Corner of the Site and on the Roof of the South Building

49. The Commission requested an explanation of signage at the northeastern corner of the site and on the roof of the South Building. In their post-hearing submission, the Applicants replaced the banner sign located at the northeastern corner of the site, above the Metrorail station entrance in the previous submission, with a vertical architectural element related to the truss. The vertical element has been incorporated to emphasize the importance of the location at the corner of Half and M Streets and to assist in identifying the Metrorail station entrance.

50. For the signage located on the roof of the South Building, the Applicants provided two alternatives for the hotel sign located on the roof of the South Building, one with the embellishments and one without. The two alternatives to the hotel sign are illustrated in Sheets A9 and A9a in the Architectural Plans and Elevations.

Office of Planning Report

51. Through testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the proposed development subject to the receipt of additional information outlined in their January 3, 2007 report. OP concluded that the review of the proposed development under the provisions of the CG Overlay District is appropriate and no planned unit development or rezoning approval is required. OP found that the proposed development is consistent with and furthers the goals of the Comprehensive Plan and the planning principles of the AWI.

52. OP had no objection to granting the requested variances from the private residential recreation space requirements of § 635, the loading requirements of § 2201, the requirements of § 1607.2 for ground floor preferred uses, the minimum floor-to-ceiling clear height requirements of § 1607.5, the step back requirements of § 1607.2, and the requirements of § 1607.4 for street frontage along Half Street, S.E. OP also had no objection to the special exceptions for roof structures under § 639 and for the step back requirements of § 1607.2.

53. In its January 3, 2007 report, OP stated that it believes the proposed development will provide an attractive gateway to the baseball stadium, provide for pedestrian movement to and from the Navy Yard Metrorail Station, and help achieve an active, mixed-use neighborhood, all while keeping with the objectives of the CG Overlay. However, OP requested additional information regarding architecture and streetscape in order to complete their evaluation of the proposed development.

54. The Applicants provided additional information regarding architecture and streetscape in their presentation at the January 11, 2007 public hearing on the matter and in their post-hearing filing dated January 25, 2007.

Other Governmental Agency Reports

55. By report dated January 5, 2007, DDOT recommended approval of the application subject to the following conditions: (1) design and installation by Applicants of a traffic signal at Half and M Streets, S.E.; (2) right-in/right-out control at Cushing Place and M Street, S.E. during peak hours; (3) truck delivery restrictions during peak hours; (4) negotiation of acceptable uses and operation of on-site parking spaces; (5) agreement and adherence to Transportation Demand Management measures to promote alternative modes of travel; (6) continued coordination with DDOT regarding ballpark operations; (7) continued coordination with WMATA regarding Navy Yard Metrorail Station improvements; and (8) DDOT approval of the conceptual designs for Half Street between M and N Streets, S.E. At the public hearing, the Applicants testified that they would pay 40% of the costs for the installation of the traffic signal at Half and M Streets, S.E., agreed to DDOT's request for right-in/right-out control at Cushing Place and M Street, S.E., and agreed to provide car share spaces for the commercial portion of the proposed development. The Applicants also agreed to provide transportation management information online, to provide bicycle storage facilities, and to continue coordination with District agencies regarding ballpark operations and Navy Yard Metrorail Station improvements.

CONCLUSIONS OF LAW

1. The application was submitted, pursuant to 11 DCMR § 1604.1 and proposed § 1610, for review and approval by the Commission. The application, pursuant to 11 DCMR § 1604.9, requested special exception and variance relief for the proposed development.

2. The Commission provided proper and timely notice of the public hearing on this application, by publication in the *D.C. Register*, and by mail to ANC 6D, OP, and to owners of property within 200 feet of the site.

3. Pursuant to 11 DCMR § 1604, the Commission required the Applicants to satisfy the burden of proving the elements that are necessary to approve the overall project under § 1604; establish the case for special exception relief from the roof structure requirements of §§ 639.1 and 411.11; establish the case for special exception relief from the step back requirements of § 1607.2; satisfy the requirements for variance relief from the private residential recreation space provisions of § 635; meet the elements for variance relief from the loading provisions of § 2201; satisfy the elements for variance relief from the step back provisions of proposed § 1607.2; meet the requirements for variance relief from the ground floor preferred uses provisions of proposed § 1607.3; satisfy the requirements for variance relief from the provisions of § 1607.4 for street frontage along Half Street, S.E.; and meet the requirements for variance relief from the minimum floor-to-ceiling clear height provisions of § 1607.5.

4. The proposed development is within the applicable height, bulk, and density standards of the Zoning Regulations, and the height and density will not cause a significant adverse effect on any nearby properties. The residential, office, hotel, and retail uses are appropriate for the site, which is located in the CG/CR District. The impact of the project on the surrounding area is not unacceptable. The proposed development has been appropriately designed to complement existing and proposed buildings adjacent to the site, with respect to height and mass.

5. No person or parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Commission to grant this application would not be adverse to any party.

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

7. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3(A)(2001) to give "great weight" to the issues and concerns of the affected ANC. As is reflected in the Findings of Fact, at its duly notice meeting held on January 8, 2007, ANC 6D, the ANC within which the Subject Property is located, voted 4-0-2 in support of the application for CG Overlay District Review.

8. Based upon the record before the Commission, having given great weight to the views of the ANC, having considered the testimony of AWC, and having considered the report and testimony OP provided in this case, the Commission concludes that the Applicants have met the burden of satisfying the applicable standards under 11 DCMR § 1604 and proposed § 1610, the independent burden for each special exception, and all but one of the variances requested.

9. The Commission concludes that the Applicants failed to meet the burden of satisfying the applicable standards for variance relief from proposed § 1607.2 in order to permit a four-foot setback, instead of the required 20-foot setback, from the building line along Half Street. The three-part variance test requires the Applicants to show an extraordinary or exceptional situation or condition resulting in practical difficulties to the Applicants in complying with the Zoning Regulations, and relief can only be granted where there will be no substantial detriment to the public good or substantial impairment of the zone plan. (11 DCMR § 3103.2.)

   The Commission concludes that the property exhibits the extraordinary or exceptional conditions necessary to meet the first part of the variance test (*See,* Finding of Fact No. 21), but fails to see how, in the context of this particular variance request, the second part of the test is met. There is no evidence that meeting the 20-foot setback requirement results in any particular practical difficulties for the Applicants. As stated in Finding of Fact No. 27, the Applicants explained that, without this variance, it would need to "develop alternative means for creating compositional relief" for the building façade. The Applicants' statement belies the fact that other alternatives are available, and its evidence did not show that such alternatives, perhaps not requiring zoning relief, had been attempted, but somehow failed, thereby leaving the Applicant with the need to request this variance relief. Because the second part of the test is not met, the Commission does not need to reach a determination of the third part of the test.

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

DECISION

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

1. The approval of the proposed development shall apply to Lots 3, 98-118, 144-147, 161, 162, 167, 815, and 824 in Square 701 and portions of the public alley in Square 701 closed on an emergency basis pursuant to Emergency Alley Closing Legislation.

2. The project shall be built in accordance with the Architectural Plans and Elevations, marked "Exhibit A" in the post-hearing filing, dated January 25, 2007, and marked Exhibit 33 in the record of the case, as modified by the guidelines, conditions, and standards below.

3. The project in its entirety shall include a maximum of 277,600 square feet of gross floor area of office space, a maximum of 105,560 square feet of gross floor area of hotel space, a maximum of 51,010 square feet of gross floor area of retail space, and 320,100 square feet of gross floor area of residential space. The distribution of uses and densities shall be as shown on Sheet D1 of the Architectural Plans and Elevations.

4. The overall maximum permitted density shall be 7.44 FAR. In order to achieve the maximum permitted density, the Applicants shall transfer non-residential density from Lots 33, 37-39, 43, 45, 46, 802, 803, 841, 850, and 868 in Square 700 by the process set forth in § 1602.1 and those same lots shall receive a like amount of residential density.

5. Except for roof structures, the maximum permitted heights of the North and South Buildings shall be 110 feet. Roof structures shall be as shown on Sheet A7 of the Architectural Plans and Elevations.

6. The project shall include a minimum of 264 off-street parking spaces for residential use and 279 off-street parking spaces for hotel, office, and retail uses including vault spaces.

7. The landscape treatment shall be as shown on Sheet L1 of the Architectural Plans and Elevations, subject to DDOT approval.

8. The interim plan for Half Street shall be implemented in accordance with Sheets L2 – L4 of the Architectural Plans and Elevations.

9. In accordance with proposed § 1607.2, a 12-foot step back shall be provided above a height of 80 feet along Half Street, as shown on Sheets A5 and A7 of the Architectural Plans and Elevations.

10. A minimum floor-to-ceiling clear height of 14 feet shall be provided in those areas designated for ground floor preferred uses, except for:

    a. Retail 7, which shall provide a minimum floor-to-ceiling clear height of 13 feet for ground floor preferred uses;

b. Retail 5a, which shall provide a minimum floor-to-ceiling clear height of 11 feet, 6 inches for ground floor preferred uses; and

c. A minimum floor-to-ceiling clear height of 11 feet shall be provided for back of house space.

11. One 55-foot loading berth, three 30-foot loading berths, and two 20-foot service/delivery spaces shall be provided for the proposed development.

12. A minimum of 56.3%, or 51,010 square feet, of gross floor area of the ground floor shall be devoted to preferred uses.

13. The new 30-foot-wide east-west connection, labeled "Monument Place" on Sheet A1 of the Architectural Plans and Elevations, shall consist of a 4-foot pedestrian zone adjacent to the North Building, a 12-foot drive lane, an 8-foot vehicular lay-by lane for the hotel use, and a 6-foot pedestrian zone adjacent to the South Building. The pedestrian zones shall be demarcated with a line of bollards.

14. The vehicular circulation program for the new 30-foot-wide east-west connection shall be one-way east bound, from Half Street, S.E. to Cushing Place, S.E.

15. The Applicants shall provide sustainable building design features as set forth in "Exhibit B" of the Applicants' post-hearing filing, dated January 25, 2007 (Exhibit 33). At least 30% of the roof areas for the proposed development shall be green roofs.

16. The elevator from the parking garage to street level shall be located on Monument Place, as shown on Sheet A1 of the Architectural Plans and Elevations.

17. The main area of the hotel lobby shall be located on the second floor of the South building with ground floor entry provided as shown on Sheet A4 of the Architectural Plans and Elevations.

18. The Applicants shall rough in the plumbing for shower facilities, leaving the decision to build out the facilities to the office tenant.

19. Signage located on the roof of the South Building shall be consistent with the illustrations on Sheets A9 and A9a of the Architectural Plans and Elevations.

20. The Applicants shall contribute up to 40% of the costs for the installation of the traffic signal at Half and M Streets, S.E.

21. The Applicants are required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance

with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. (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, familial status, family responsibilities, matriculation, political affiliation, 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 Applicants to comply with the Act shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

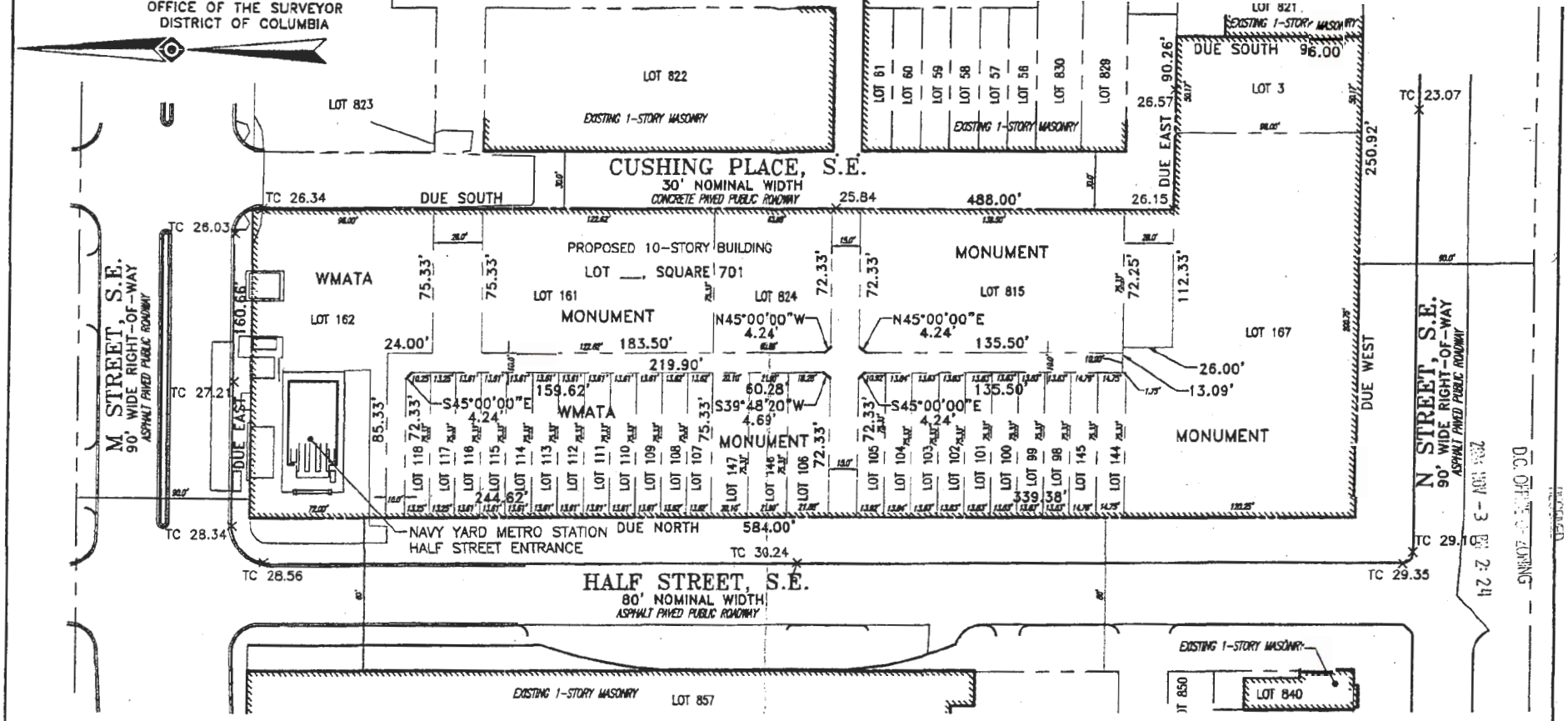
On February 12, 2007, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to approve).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on February 12, 2007 by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on NOV 2 3 2007.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING



SURVEYORS CERTIFICATE

I HEREBY CERTIFY THAT THE PROPERTY LINES AND BEARINGS AND DISTANCES HEREON ARE BASED UPON SURVEYED INFORMATION BASED UPON A BOUNDARY SURVEY PERFORMED BY CONTROL POINT ASSOCIATES, INC. AND VIKA INCORPORATED IN 2005 AND 2006. THE PROPOSED IMPROVEMENTS ARE CORRECTLY DRAWN ON THE PROPERTY. THIS EXHIBIT WAS PREPARED FOR THE PURPOSES OF THE ZONING SUBMITTAL FOR THE PROPERTY DESCRIBED HEREON.

GREGORY S. GALLAS
DISTRICT OF COLUMBIA LAND SURVEYOR #900573

10/6/06
DATE

GRAPHIC SCALE
50 0 25 50 100
(IN FEET)
1 inch = 50 ft.

EXHIBIT PLAT
LOT TO BE RECORDED
SQUARE 701
DISTRICT OF COLUMBIA
SCALE:1" = 50' OCTOBER, 2006

CONTROL POINT ASSOCIATES, INC.

22630 DAVIS DRIVE, SUITE 200
STERLING, VIRGINIA 20164
703.904.9400 FAX 703.904.9797

35 TECHNOLOGY DRIVE
WARREN, NJ 07059
908.668.0099 FAX 908.668.9595

S062029EXB

Z.C. Case No. 06-4