

**APPLICATION ON BEHALF OF BALLPARK SQUARE LLC FOR MODIFICATION
OF RESIDENTIAL STRUCTURE ON 1ST STREET, SE IN SQUARE 701**

CAPITOL GATEWAY OVERLAY DISTRICT REVIEW FOR FIRST STREET, SE



**ZONING COMMISSION
District of Columbia**

CASE NO. 12-054

EXHIBIT NO. 5

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I. Introduction

This application is submitted on behalf of Ballpark Square, LLC (the “**Applicant**”)¹, the applicant in Zoning Commission Case Nos. 12-05 and co-developer of the Property, for Zoning Commission review and approval of modification to the project on First, M, and N Streets, SE in the Capitol Gateway Overlay District (“**CG Overlay**”) approved by Zoning Commission Order No. 12-05 (“**Order**”). The Order approved an approximately 653,159 square foot mixed-use development, containing separate components for office, hotel, and residential uses tied together through a ground floor retail pedestal and an approximately 7,630 square foot retail building on the corner of 1st and N Streets, NE (the “**Project**”).

The Applicant hereby requests a modification to the Project approved by the Order to allow for the reorientation of the residential component, which results in changes to the residential building’s appearance on First Street and a modest increase in the number of units and gross rentable area, among other small changes. The hotel and office components, along with the ground retail elements of those structures, and the two story retail structure on Lot 169² remain unchanged in this modification.

The residential component will be enlarged from approximately 260,240 square feet (approximately 292 units) to 303,993 square feet (approximately 326 units) of residential use while the retail use within the residential component will be reduced from approximately 28,063 square feet to 26,529 square feet. The total retail use provided by the Project will be modified from approximately 46,467 square feet to approximately 45,033 square feet. The Project will still contain approximately 130,410 square feet of hotel use (approximately 170 units), and 223,819 square feet of office use, and provide approximately 370-380 parking spaces. As a result of the enlargement of the residential component, the total square footage of approximately 653,159 square feet (8.89 FAR) approved under the Order will be increased to approximately 695,625 square feet (9.46 FAR).

The property that is the subject of this application is located on Lot 170, in Square 701³ (the “**Property**”). The Property is comprised of approximately 77,209 square feet of land area and is located in the CG/CR Zone District. The Property is comprised of two parcels – a north parcel of approximately 73,591 square feet of lot area (the “**Main Parcel**”) and a south parcel of approximately 3,618 square feet of lot area (the “**South Parcel**”). A property owned by Capital Riverfront Hotel, LLC (with a project approved by the Zoning Commission as Z.C. Case No. 12-19) splits the Property into the Main Parcel and the South Parcel.

The Applicant submits this application pursuant to Sections 1602.1(e) and 1610 of the District of Columbia Zoning Regulations, which require Zoning Commission review of properties abutting M Street, SE, properties located in Square 701, or properties that are the recipient of certain amounts of density through combined lot development rights (“**CLDs**”), as

¹ In the prior case to the Zoning Commission, the Applicant was the contract purchaser of the Property. Since that time, the Applicant and SCD Acquisitions, LLC (through Ballpark Square 701, LLC) have closed on the purchase of the Property. Since this modification does not affect the portion of the project on A&T Lot 869, SCD Acquisitions, LLC and its affiliate (and current owner of A&T Lot 869) Ballpark Square 701, LLC, are not parties to this modification application.

² Lots 155 and 156 in Square 701 were subdivided into one Record Lot, Lot 169 in Square 701 after the Order was issued.

³ Lots 33-41, 48-61, 131-136, 155-160, 816-817, 822, 823, 828-830, 832-834, and 854-856 in Square 701 were subdivided into one Record Lot, Lot 170 in Square 701 after the Order was issued.

the result of the modification to the residential component of the Project. The Applicant also maintains its prior request and approval for special exception relief with regard to its parking requirement for the South Parcel; and variance relief from the loading requirements of Section 2201.1 for the South Parcel and the size of the loading berths for its residential and retail uses on the Main Parcel, and the rear yard requirement of Section 636 for the residential and hotel structures on the Main Parcel. The only element of such relief relevant to the modified residential component is the rear yard relief which is not changing as the result of this modification.

II. Jurisdiction of the Zoning Commission

The Zoning Commission has jurisdiction to grant approval of the modification to the proposed development, and the requested special exception and variance relief pursuant to Sections 1602.1(e), 1610, 636, 3103, and 3104 of the Zoning Regulations. The relief from Sections 2116.5 and 2201 will not change as the result of this modification.

III. Capitol Gateway Overlay

The Capitol Gateway Overlay was established in order to promote nine primary goals:

- a. Assure 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. Encourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural and hotel or inn uses;
- c. Allow for continuation of existing industrial uses, which are important economic assets to the city, during the extended period projected for redevelopment;
- d. Provide for a reduced height and bulk of buildings along the Anacostia riverfront in the interest of ensuring views over and around waterfront buildings, and provide for continuous public open space along the waterfront with frequent public access points;
- e. Require suitable ground-level retail and service uses and adequate sidewalk width along M Street, SE, near the Navy Yard Metrorail station;
- f. Provide for the development of Square 702-706 and Reservation 247 as a ballpark for major league sport and entertainment and associated uses;
- g. Provide for the establishment of South Capitol Street as monumental civic boulevard;
- h. Provide for the development of Half Street, SE as an active pedestrian oriented street with active ground floor uses and appropriate setbacks from the street facade to ensure adequate light and air, and a pedestrian scale; and

- i. Provide for the development of First Street, SE as an active pedestrian oriented street with active ground floor uses, connecting M Street, the Metro Station, and existing residential neighborhoods to the Ballpark site and the Anacostia Waterfront.

11 DCMR 1600.2

IV. Description of Property

The Property is located in the southwest corner of the intersection of First and M Streets, SE. It is bound by M Street to the north, First Street to the east, Cushing Place to the west and N Street to the south. There are intervening properties separating the Main Parcel and the South Parcel that are not part of this application which are owned by Capital Riverfront Hotel, LLC (that will contain a 130 foot project approved by the Commission as Z.C. Order No. 12-19). The Property is located one block north of the Ballpark and immediately east of Monument Realty's development also in Square 701 (which was approved by the Zoning Commission in ZC Case Nos. 06-46 and 06-46A). An entrance to the Navy Yard Metrorail Station is located just to the west of the Property on M Street, within Monument Realty's office building, 55 M Street, SE. Pictures of the Property and the surrounding area are included in Exhibit A.

V. Procedural History

The Zoning Commission held a public hearing on the original case on October 1, 2012 to consider the Applicant's request for design review pursuant to Chapter 16 of the Zoning Regulations and Applicant's requests for special exception and variance relief pursuant to Sections 636, 2116.5, and 2201 of the Zoning Regulations. Parties to the case included the Applicant and the Advisory Neighborhood Commission 6D ("ANC"). The ANC expressed support for the Applicant's application. The Zoning Commission approved the original case and the Order became effective on December 21, 2012.

VI. Description of Modification and Project

The Applicant hereby requests a modification to the Order to revise the residential portion of the Project with a new configuration, a reconsidered façade, an increased unit count, and a reconfiguration of retail space within the residential component. The Applicant does not propose to modify the hotel or office portions of the Project, and the Applicant does not propose to modify those retail portions of the Project that are not associated with the residential component.

The modification of the Project will enlarge the residential component from approximately 260,240 square feet (approximately 292 units) to 303,993 square feet (approximately 326 units) of residential use while the retail use within the residential component will be reduced from approximately 28,063 square feet to 26,529 square feet.

The total retail use provided by the Project will be modified from approximately 46,467 square feet to approximately 45,033 square feet. The Project will still contain approximately 130,410 square feet of hotel use (approximately 170 units), and 223,819 square feet of office use. As a result of the enlargement of the residential component, the total square footage of

approximately 653,159 square feet (8.89 FAR) will be increased to approximately 695,625 square feet (9.46 FAR), a modest 6 percent increase.

Consistent with Sections 1604 and 1606, retail and restaurant uses are still proposed for the maximum amount of the ground floor space possible in the Project (other than lobbies for the office component and related parking and service areas). The Project has a building height of approximately 130 feet and provides approximately 370-380 parking spaces in total. Such number of parking spaces has not changed from the originally-approved project, although the total parking area will be slightly reduced. The Project as modified has a lot occupancy of 79 percent, up from 74 percent, for the areas above the first floor, which is compliant with the Zoning Regulations.

As with the previously approved design, the Project will break the massing of the building into three distinct forms with the office, hotel and residential structures appearing and functioning as their own independent components. The structures will be tied together by through building connections on the ground floor.

Comparisons of all pages of the plans approved by the Commission under the Order and all pages of the plans currently proposed are included as Exhibit A. The pages approved by the Commission are on the left side of this exhibit, while the new pages are on the right.

A. Residential Component

Instead of its court configuration opening to the south towards the Ballpark, the modified residential component's primary court now opens as a "U" west towards the Cushing Place. This reconfiguration allows the Project to react to the party wall proposed at the southern edge of the Property under Zoning Commission Case No. 12-19. Rather than opening its main courtyard onto this party wall, the redesigned residential component will now have at-risk windows along such party wall and retain the views and air from its primary court opening regardless of the development on the adjacent parcel. In addition, the redesigned residential component will allow for a more continuous streetwall along First Street. The new design of the residential component is best shown on page ADD-1 of Exhibit A.

The residential component is thoughtfully planned with its future residents in mind. The rooftop is designed to provide a respite for the residents: complete with a pool and pool terrace, as well as a roof terrace facing the Ballpark. In particular, a unique outdoor cinema has been included on the roof, as shown on page ADD-2 of Exhibit A. The inner core of the residential component will face a heavily landscaped courtyard, thereby providing a private living option. A significant number of units will be placed onto First Street and thereby have monumental views. In all, the residential component will provide spaces that appeal to a range of tenants.

The residential component consists of three segments that form a courtyard facing west towards Cushing Place and a courtyard facing east towards First Street. Such courts create a great deal of open space on the site that will allow the residential units a high degree of access to light and air. The new southern irregular court (Court D) comprises 6,164 square feet has a maximum diameter of 58-feet, 9-inches. The new northern irregular court (Court C), between the residential building and the hotel, comprises 3,720 square feet and has a maximum diameter

of 38-feet, 9-inches. The modified plans will provide 9,884 square feet of open space associated with the residential building (part of 15,967 square feet for the Project overall) compared to the residential building's 12,565 square feet of open space originally (and the Project's original 18,648 square feet overall).

Due to the reorientation of the building, the First Street façade has changed significantly, as depicted in the attached renderings. The façade of the building has several projecting bays along First Street that have horizontal and vertical gaps between these bays. These elements break down the scale of the façade and give the building a unique and interesting residential expression. The railings of the balconies will be a combination of glass and metal mesh railings. These are arranged in a diagonal pattern on the façade create a sense of movement and energy on the whole façade. Further, the entry will now be at the southern end of the building, whereas it had previously been in the middle of the building. In association with the relocation of the entry are modest changes to the cornice and canopy above the doors. Very minor changes to the spacing of the street trees will be necessary to accommodate the change in the location of the entryway. The Cushing Place elevation has also been reconsidered, although the design of such façade is very similar to that previously approved by the Zoning Commission.

The modified residential component incorporates materials of the highest quality and a color palette that mark the building as a location in a burgeoning neighborhood of the Ballpark District. Similar to the previously approved residential structure, the primary materials used will be brick, grey metal panels, painted aluminum, metal mesh and glass.

The unit mix will also change slightly. The modification will increase the number of 1- and 2-bedroom units and reduce the number of studio units, junior 1-bedroom units, and 2-bedroom with den units.

The residential component's entrance will still be located on First Street and all loading and parking for the building will be accessed from Cushing Place.

B. Retail Component

As stated above, the total retail use provided by the Project will be modified from approximately 46,467 square feet to approximately 45,033 square feet. Approximately 37,403 square feet of retail use will be provided on Main Parcel and approximately 7,630 square feet of retail use will still be provided on the South Parcel.

The design approach for the retail component is the same for the modified Project as the approach approved under the Order. As in the approved project, one of the primary goals of the Project is to create a highly animated and diverse retail environment with high-quality, authentic materials. The ground floor retail will be demarcated from the buildings above by metal banding that will unite the entirety of the retail level for the Main Parcel while announcing the name of the individual retailers and allowing each to customize their spaces within the general design parameters of the Project. The spaces are the same as the retail spaces approved under the Order in that they will have ceiling heights of approximately fifteen (15) feet, making them marketable to a wide range of urban retailers and exceeding the fourteen (14) foot required ceiling clearances for such spaces. Individual retailers will be encouraged to make their own mark on

the streetscape with inboard and outboard tables, chairs, benches, and planters that both reflect and complement their storefronts and invite the public into the stores. The retail tenants will be subject to the retail guidelines approved as part of the Order.

C. Other Elements of Project

As stated above, the Project will still contain approximately 130,410 square feet of hotel use (approximately 170 units), and approximately 223,819 square feet of office use on the Main Parcel along with approximately 7,630 square feet of retail use on the South Parcel. The design of the office and hotel components and South Parcel retail building is unchanged from the design approved under the Order.

The design of the two below-grade parking garages has not changed as a result of this modification. These garages will still have access from the alley, known as Cushing Place.

D. Streetscape

As previously approved, the Project's streetscape will use several materials for the sidewalk including concrete and stone or precast pavers. The materials will define specific areas for seating and emphasize the entries to the buildings above. A number of benches will be provided along the street, under the trees and lights. The development team is paying particular attention to the pedestrian experience in an effort to activate the streetscape to the extent possible.

E. Zoning Parameters of the Project

The Project will have a floor area ratio ("FAR") of 9.46⁴ (an increase from 8.89) and a maximum building height of 130 feet, and will provide approximately 370-380 parking spaces (it will also include significant bicycle parking spaces). The building has a lot occupancy of 79% (an increase from 74%) beginning on the first floor of the residential use, the second floor of the building. The Project will consist of a single building for zoning purposes with the exception of the parcel on N Street. More detailed Zoning tabulations are included on Page A-04REV of Exhibit A.

VII. The Applicant Satisfies the Burden of Proof for Zoning Commission Review of Buildings, Structures, and Uses, the Use of CLDs, and for Special Exception and Variance Relief

Pursuant to Section 1610.3 of the Zoning Regulations, the Applicant must demonstrate that the application satisfies the requirements of Section 3104 as well as the specifically delineated requirements of the CG Overlay (Section 1604 for buildings that have frontage on M Street, and Section 1606 for buildings on First Street south of M Street). The Applicant satisfies this standard for the proposed modification to the residential component as follows.

⁴ The Applicant will enter into CLD covenants, pursuant to Section 1602.1(a) and (e) of the Zoning Regulations, to achieve this FAR. Under Section 1602.1(e) the use of CLDs for any FAR above 8.5 on the Property requires the approval of the Zoning Commission, as described herein.

A. The Applicant Satisfies the Special Exception Standard with Regard to Zoning Commission Review Under the CG Overlay Regulations

1. The Proposed Design Is in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps

There is a two pronged test to justify the request for special exception relief. An applicant must demonstrate that the project is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and that it will not affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The CG Overlay outlines a number of considerations that should be weighed in determining if an application is in harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.

a. The proposed building will achieve the objectives of the CG Overlay District as set forth in Section 1600.2. (Section 1610.3(a))

The Project as modified will still achieve the objectives of the CG Overlay District that are set forth above. The modification specifically will deliver more residents at this important site – to help catalyze the Capitol Gateway neighborhood and satisfy CG Overlay objectives.

The Applicant is still proposing a mixed-use development that will include an enlarged residential component, a variety of preferred retail uses, and the same amount of commercial office and hotel space. Importantly, Section 1600.2(b) specifically mentions hotel uses, which are being furnished by the Project to enhance the ground level preferred uses. The height and increased density of the building are within the parameters for the CG/CR Zone District and are consistent with its High Density Residential and High Density Commercial designations under the Comprehensive Plan.

As desired under Sections 1600.2(e) and (i), the Project is still designed to create active, pedestrian-oriented streets for both First and M Streets. The Applicant is proposing a mix of retail uses that will support and sustain such activity. The retail will serve both the residents of the community as well as attract individuals who are attending activities at the Ballpark, possibly discovering the neighborhood for the first time.⁵ The ceiling heights of the retail space will have at least fifteen (15) feet of clearance, which exceeds the fourteen (14) foot retail space clearance requirement in Sections 1604.7 and 1606.4. Therefore, the building is designed to implement the objectives of the CG Overlay.

b. The proposed building will help achieve the desired mix of uses in the CG Overlay District as set forth Sections 1600.2(a) and (b), with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail, or service uses. (Section 1610.3(b))

⁵ The Applicant might pursue legislation with the District of Columbia City Council to create special electronic signage legislation to assist in creating a more vibrant entertainment district founded on the Ballpark.

As mentioned above, the Project will still incorporate residential, retail, hotel, and service uses, which are consistent with Sections 1600.2 (a) and (b). Over 68% (up from 66%) of the development will be dedicated to these preferred uses. Therefore, the increase from approximately 292 to approximately 326 residential units will more effectively achieve the preferred use goals of the CG Overlay.

The residential component will include a mix of unit types (studios, one bedroom, one bedroom with den, two bedrooms, and two bedroom with den) that will attract a diverse resident base while the retail will be designed to accommodate entertainment and retail uses.

- c. The proposed building will be in context with the surrounding neighborhood and street patterns. (Section 1610.3(c))

The new residential structure is consistent with the high density development encouraged around the Navy Yard Metro Station. The Property is surrounded by existing and proposed office, hotel, and residential buildings, making the Project's mixed use program complementary to adjacent land uses. The development will encourage pedestrian activity along First and M Streets through the inclusion of ground floor retail, an enhanced streetscape environment, and removing curb cuts along all surrounding streets. The development will essentially serve as a gateway between the Navy Yard Metro Station, particularly the eastern entrance thereof, and the Ballpark. The Project will still utilize the alley for all parking and loading access.

The design of the new residential structure is intended to be different, yet complementary to the surrounding neighborhood. The redesigned residential component will be uniquely designed such that the "tower" structure appears as a separate, but related, design. As mentioned above, each of such "towers" will be unified by the retail floor that runs the entirety of the lot frontage for the record lot, except for the entrances to the towers themselves. The proposed redesigned residential component respects the existing street grid and is in context with the surrounding neighborhood and street patterns.

- d. The proposed building will minimize conflict between vehicles and pedestrians. (Section 1610.3(d))

The proposed redesigned residential component promotes a safe and efficient pedestrian experience along First Street which is a primary pedestrian corridor within the CG Overlay. Per the CG Overlay regulations and as in the project approved under the Order, no new curb cuts will be established along First Streets. As mentioned above, access to parking and loading for the residential component will be from Cushing Place. The Project will still eliminate curb cuts along First Street which will reduce the possibility of vehicular and pedestrian conflicts.

- e. The proposed building will minimize unarticulated blank walls adjacent to public spaces through facade articulation. (Section 1610.3(e))

The elevations attached as Exhibit A depict the proposed modified residential building facades. These proposed building facades are highly articulated on each elevation, thus minimizing unarticulated blank walls adjacent to public spaces. The façade articulation is accomplished by the use of building materials, coloring, and display windows along the ground

floor. However, the residential component also includes projections through a series of balconies and bays. These proposed projections provide views down First Street for many residents of the Project along with sweeping views of the burgeoning Ballpark area. Special attention has been given to the facades facing the Project's alley as well. As can be seen on page A-31REV of Exhibit A, as much detail has been added to such the residential component's modified alley-facing façade as has been added to the street-facing façade.

- f. The proposed building will minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards. (Section 1610.3(f))

The entirety of the building has still been designed to meet LEED certification standards for new construction. As in the project approved by the Order, some of the key "green" features include low emitting materials, water efficient landscaping, water saving fixtures, recycled building materials and other similar elements. In addition, the environmentally sustainable residential development creates a livable transit-oriented community adjacent to the Navy Yard Metro Station, with bicycle parking and changing facilities. The residential component's configuration results in shallow dwelling units which rely on natural ventilation and take advantage of natural lighting and views to promote a healthy and energy efficient lifestyle.

- g. The building or structure shall provide for safe and active streetscapes through building articulation, landscaping, and the provision of active ground level uses including retail, entertainment, cultural, and pedestrian concourse space. (Section 1610.5(a))

The proposed modification to the residential building encourages pedestrian activity along its First Street facade and provides safe and active streetscapes. This is achieved through building articulation, as demonstrated by the plans attached as Exhibit A; thoughtfully landscaped and hardscaped spaces in the adjacent public space; the provision of ground floor retail; variable depth retail areas; and electronic signage. In order to foster the pedestrian activity along the facade and minimize vehicular and pedestrian conflicts, the Applicant still proposes to provide access to its garage and its loading areas from Cushing Place. In addition, the modified design brings a greater degree of the residential component's façade to the First Street right of way.

- h. The building or structure shall provide for safe and convenient movement to and through the site, including to public transit, the Ballpark, and to the Anacostia Riverfront. (Section 1610.5(b))

The primary pedestrian pathway for the Project will still be along First Street which is an often forgotten or ignored link between the eastern Navy Yard Metrorail Station and the Ballpark. While Half Street is the main access way to the Ballpark for pedestrians, the modified Project still aims to create another exciting access option for Ballpark visitors along with a unique place to live for District residents. As shown on Pages A-51REV and A-52REV of Exhibit A, the ground floor retail provided in the residential component along First Street will make for an interactive and exciting pedestrian experience for those attending a ballgame as well

as those who are simply seeking a shopping or eating experience. Additionally, the landscaping, lighting, transparent display glass of the ground floor retail, and overall increased activity will enhance pedestrian safety. Just as the development of First Street encourages pedestrian activity to reach the Ballpark, it also provides a further link towards safe and convenient access to the Anacostia Riverfront. In addition, it fosters a developing community that will invite even more people to utilize the Ballpark's Metro stations, particularly the eastern Navy Yard Station entrance.

- i. The application shall include a view analysis that assesses openness of views and vistas around, including views toward the Capitol Dome, other federal monumental buildings, the Ballpark, and the waterfront. (Section 1610.5 (c))

As depicted on Page A-50REV of Exhibit A, the modified Project will not detract from area views, but will enhance them. The modified residential component of the Project does not block the view of the Capitol, other federal monumental buildings, the waterfront, or the Ballpark. Rather, the superior design of the modified residential component will provide a favorable view for tenants and residents of neighboring buildings and visitors to the Ballpark.

2. The Proposed Building Will Not Affect Adversely the Use of Neighboring Property in Accordance with the Zoning Regulations and Zoning Map

The property to the west, southwest, and south of the proposed building has been approved for a mixed-use development of varying, but similar, densities and heights. When finished, it will include residential, retail, office, and hotel uses. To date, only the office portion of such building has been constructed (55 M Street, SE). The properties to the north of the site are office buildings with ground floor retail. To the west of the Project, across First Street, is a seven (7) story Federal mapping agency building and a large surrounding parking lot.

The proposed modified residential component of the Project and the resulting envelope of the entire Project is in keeping with the scale of density and height of the surrounding buildings and fits appropriately into that context. The residential component has been designed to respect and in the case of the Ballpark, serve, the surrounding buildings. It will not affect adversely these neighboring properties, but will work in concert with them to create a more dynamic destination and community surrounding the Ballpark. In fact, the design of the residential component will add visual interest to the neighborhood and bring a unique visual energy to First Street.

B. The Applicant Satisfies Section 1602.1(e) Such that the Zoning Commission May Approve the Use of CLDs Over 8.5 FAR

Under Section 1602.1(e), the Zoning Commission may approve the use of CLDs to achieve an additional transfer of up to 1.0 FAR of density to Square 701 provided that the applicant satisfies the objectives and guidelines of Sections 1601 and 1604–1607, as applicable. Here, the Applicant proposes a transfer of approximately 0.96 FAR of additional FAR beyond 8.5 FAR through the use of CLDs. Previously, the Commission approved the use of 0.39 FAR

beyond 8.5 FAR with the use of CLDs. The increase in the size of the residential component results in the entirety of the 0.57 FAR increase of this request.

The modified residential element of the Project complies with Section 1601 in all ways. Section 1605 and 1607 are not relevant to the Property or the modification since they regulate planning for projects fronting on South Capitol Street and Half Street, respectively.

Section 1604 governs projects fronting on M Street, SE. The modification does not alter the office element of the Project facing M Street. As previously approved by the Commission, the still Project conforms to the requirements of Section 1604 and furthers the objectives of such Section. As a whole, the Project clearly achieves the objectives of Section 1604 since it delivers an even greater amount of preferred uses to M Street than are required by this Section. Further, the design of the Project's M Street façade is still intended to foster an interactive pedestrian experience that capitalizes on its location adjacent to the Navy Yard Metro Station at 55 M Street. Specifically, the Project still does not propose driveways on such street. The streetwall of the office and retail component is set back from M Street a width of 18 feet, one (1) inch from the curb along M Street SE. 77.5% of the gross floor area of the ground floor is reserved for preferred uses described in Section 1604.4 (while only 35% of gross floor area is required). Such preferred uses occupy 100% of the building's street frontage along M Street except for the space devoted to the office building and fire control. The ground floor retail fronting on M Street will have not less than 50% of the streetwall devoted to display windows and entrances to commercial uses and the minimum floor to ceiling height for such level will be fifteen (15) feet.

Section 1606 governs projects fronting on First Street, SE. Similar to the project approved under the Order, the modifications to the Project conforms to the requirements of Section 1606 and furthers the objectives of such Section. As a whole, the Project still achieves the objectives of Section 1606 since it provides a long unbroken streetscape experience for pedestrians and visitors to the site. The entirety of such span is filled with active preferred uses that will foster the evolution of First Street as its own destination, along with becoming a new gateway to the Ballpark. Specifically, as mentioned above, the Project devotes more than 77.5% of the gross floor area of the ground floor to preferred uses described in Section 1606.2 and it does not propose any of the uses prohibited in this Section. As above, such preferred uses occupy 100% of the building's street frontage along M Street except for the space devoted to the office building and fire control and the minimum floor to ceiling height for such level will be fifteen (15) feet.

C. The Applicant Is Maintaining Its Special Exception Relief for Parking on the South Parcel and Its Variance Relief for the Loading

The Applicant is maintaining its special exception relief pursuant to Sections 3104 and 2116.5 from 11 DCMR Sections 2101.1 since the four (4) parking spaces required for the retail use of the South Parcel are provided on the Main Parcel. Similarly, the Applicant is maintaining its variance relief from 11 DCMR Section 2201.1 relating to the loading requirements for the South Parcel retail and the residential and retail uses on the Main Parcel. The modification described herein does not alter these elements of relief approved by the Zoning Commission.

D. The Applicant Still Satisfies the Variance Standard for the Rear Yard Relief

The Applicant is maintaining its variance relief from Section 636 from the rear yard requirements for the residential building (and hotel building, which has not changed as a result of this modification) and requests the approval of the modified design in relation to the rear yard relief previously granted. Section 636 requires the proposed residential building provide a rear yard of three (3) inches per foot of height for each residential structure. Due to the building's façade's height of 130 feet, a 32 foot, six (6) inch rear yard would be required. However, the Project will not provide a rear yard. Instead, the Project will provide several courts in lieu of a rear yard, as described below.

In order to satisfy the standards for area variance relief, the Applicant must satisfy a three part test:

- (1) the property must be subject to an extraordinary or exceptional situation or condition;
- (2) a practical difficulty will result if the applicant is required to satisfy the strict application of the Zoning Regulations; and
- (3) no harm to the public or to the zone plan will occur as a result of the approval of the variance application.

See Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990). As detailed below, the Applicant meets this test.

1. An Extraordinary Or Exceptional Situation Or Condition Is Inherent To The Property

The D.C. Court of Appeals held in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990) that uniqueness may arise from a single situation or condition on the Property. Rather, it may arise from a "confluence of factors." For example, in *French v. Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), the Court of Appeals upheld the granting of a variance from 11 DCMR § 217.1 based on the Board's findings that several circumstances existed which, when considered together, made the property unique.

In *Capitol Hill Restoration Society v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987), the Court also held that in order to demonstrate such an exceptional situation or condition, "the property owner must present proof that 'the circumstances which create the hardship *uniquely* affect the *petitioner's property*....'" *Id.* at 941-42 (quoting *Taylor v. D.C. Bd. of Zoning Adj.*, 308 A.2d 230, 234 (D.C. 1973)) (emphasis in original). However, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood. In *Gilmartin*, the Court of Appeals rejected the idea that a property was not unique because the asserted exceptional condition was common to other types of properties in other zoning districts. *Gilmartin*, 579 A.2d. at 1167.

As previously determined by the Zoning Commission, the Property meets the "exceptional conditions" element of the variance test. The unique exceptional condition at the property arises from a confluence of factors rather than a single situation or condition. In

addition, the exceptional conditions at the property are not related to general conditions in the neighborhood. These conditions have not changed from the prior approval.

The Main Parcel is a uniquely large lot, at 73,591 square feet. The Property is also very deep, with an east/west dimension of approximately 160 feet. Further, the Project is unique in that it is developing the Main Parcel with a three (3) tower component while it is also developing the South Parcel, approximately 58 feet to the south.

The Property is also located in the CG Overlay, which requires a mixture of uses and dictates a number of design features with which the Applicant must comply. The regulatory burdens on the site along with the desire to achieve the most attractive and functional building components have driven the design of the building. Given the building's location on First Street, M Street and in Square 701, there are numerous design requirements that the Applicant has incorporated into its proposal. The Applicant is also proposing to include four different types of land uses on the Property, which effort is encouraged by the CG Overlay regulations. Finally, the Property is located directly north of the Ballpark which requires a building design that is aware of the building's context and respectful of the District of Columbia's objectives for development in and around the Ballpark.

In addition, the Property has an atypical amount of high profile street frontage and public access. Such a site creates complications to construct structures that are fully-compliant with the Zoning Regulations since having a large amount of driveways and service-related areas would stifle the street life. This issue is particularly important in the CG Overlay, within which the Property falls, which includes restrictions against certain driveway and curb cuts in other portions of the Overlay.

2. A Practical Difficulty Exists in Satisfying The Strict Application Of The Requirements Of The Zoning Regulations

The DC Court of Appeals defined "practical difficulty" in Palmer v. D.C. Bd. of Zoning Adjustment, 287 A. 2d 535, 542 (D.C. 1972) as the following: "[generally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." In area variances, applicants are not required to show "undue hardship" but must satisfy only "the lower 'practical difficulty' standards." Tyler v. D.C. Bd. of Zoning Adjustment, 606 A.2d 1362, 1365 (D.C. 1992), citing Gilmartin v. D.C. Bd. of Zoning Adjustment, 579 A.2d 1164, 1170 (D.C. 1990). Finally, it is well settled that the BZA may consider "... a wide range of factors in determining whether there is an 'unnecessary burden' or 'practical difficulty' ...". Gilmartin, 579 A.2d at 1171, citing Barbour v. D.C. Bd. of Zoning Adjustment, 358 A. 2d 326, 327 (D.C. 1976). See also, Tyler v. D.C. Bd. of Zoning Adjustment, 606 A.2d 1362, 1367 (D.C. 1992). Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible. The Applicant, as demonstrated below, meets this standard.

As previously determined by the Zoning Commission, the program of the Project, lot configuration, and the unique zoning on the Property combine to create a practical difficulty to provide a compliant rear yard.

The Applicant proposes four uses for the Main Parcel, three of which require a “tower” element to sufficiently include. The inclusion of such tower elements means that the required rear yard for the residential is not able to be furnished. To require the full rear yard of 32 feet, six (6) inches would necessitate elimination of a significant portion of the hotel and residential buildings, which would detract from the appeal of the buildings, and possibly the viability of the project. Providing a compliant rear yard could also push the uses closer together, when the Project has been designed to maximize the space between the use components through courts (and there is an eighteen (18) foot setback from M Street).

Further, the CR Zone District does not permit the use of a court in lieu of a rear yard for a corner lot such as the Main Parcel. If the Property were zoned C-3-B or C-3-C (as much of the surrounding property is), the Project could provide a court in lieu of a rear yard, which would be compliant at the Project since there are two compliant courts – a 58 foot, nine (9) inch court and a 36 foot, nine (9) inch court. In addition, if the 30-foot-wide Cushing Place were considered a street, rather than an alley, the rear yard would not be required under Section 636.5 since the Main Parcel would be deemed to front on three (3) streets.

3. No Harm To The Public Good Or To The Zoning Plan Will Occur As A Result Of The Approval Of The Variance Application

As previously determined by the Zoning Commission, relief can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the Zone Plan. The proposed design is in keeping with the intent of the CG Overlay regulations and it furthers the objectives of the CG Overlay.

The Applicant’s request for relief from the rear yard requirement will not be detrimental to the public good or impair the intent, purpose and integrity of the Zone Plan. The Applicant is providing as much of the preferred use mixture on the Main Parcel as possible. The resulting three “towers” created by this proposal and the interwoven courtyard systems furnish a more open view-inducing configuration than the provision of a compliant rear yard – only for the residential and hotel structures – would have achieved. Such varied structures creating three different vertical elements are consistent with the design guidelines and purposes of the CG Overlay. No neighbor would be adversely impacted by the provision of these courts rather than a compliant rear yard. Similarly, no view sheds of monuments, the Ballpark or the Anacostia would be blocked by the provision of courts in lieu of a compliant rear yard. Further, the provision of dead rear yard space so close to the Ballpark would not be good urban design.

The severity of the requested variance relief described above is not great. The granting of this area variance allows the Applicant to create a project that is complementary to the surrounding area and is a significant architectural statement for the immediate area and the District of Columbia.

VIII. Exhibits

The following exhibits are attached to this submission:

Exhibit A: Architectural Plans/Sections/Elevations and Photographs of the Property

Exhibit B: A Copy of the Order

Exhibit C: Excerpt of Comprehensive Plan Map

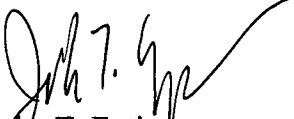
Exhibit D: Property Owner List

Exhibit E: Authorization Letter Authorizing this Application

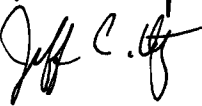
IX. Conclusion

For the foregoing reasons, the Applicant asks that the Commission approve this request for a modification to its prior approval under the Order. We look forward to presenting this application to the Commission at the public hearing on this matter.

Respectfully,



John T. Epting



Jeff C. Utz