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ZONING COMMISSION
District of Columbia

CASE NO. 12-05 B

EXHIBIT NO. 5 B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 12-05
Z.C. Case No. 12-05
Ballpark Square, LLC and SCD Acquisitions, LLC
(Capitol Gateway Overlay Review)
November 14, 2012

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on October 1, 2012, to consider an application for property owned by Ballpark Square, LLC and SCD Acquisitions, LLC (collectively, "Applicant") for review and approval of a new development pursuant to the Capitol Gateway (CG) Overlay District provisions ("CG Overlay District Review") set forth in Title 11, Chapter 16 of the District of Columbia Municipal Regulations ("Zoning Regulations"). The property that is the subject of this application consists of Lots 33-41, 48-61, 131-136, 155-160, 816-817, 822-823, 828-830, 832-834, and 854-856 in Square 701 (the "Property")¹. The Property is comprised of approximately 77,123 square feet of land area and is located in the CG Overlay/CR Zone District. The Property is comprised of two parcels – a north parcel of 73,505 square feet of lot area ("Main Parcel") and a south parcel of 3,618 square feet of lot area ("South Parcel").

In addition to the review requested pursuant to §§ 1602.1 and 1610 of the Zoning Regulations, the Applicant also requested the following relief: special exception relief with regard to the parking requirements of §§ 2101.1 and 2116.2 for the retail use on the South Parcel; variance relief from the loading requirements of § 2201.1 for the residential and retail uses on the Main Parcel and the retail use on the South Parcel; and variance relief from the rear yard requirements of § 636 for the residential and hotel structures on the Main Parcel.

The Commission considered the application pursuant to Chapter 30 of the Zoning Regulations. A public hearing was conducted in accordance with the provisions of § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

PROCEDURAL HISTORY

1. On May 22, 2012, the Applicant submitted an application to the Commission for design review, special exception, and variance relief for the Property. The Applicant requested

¹ Since the filing of this application, the Applicant created eight new Assessment and Taxation ("A&T") lots out of four of these lots: A&T Lot 822 became A&T Lots 860 and 861, A&T Lot 855 became A&T Lots 862 and 863; Lot 37 became A&T Lots 864 and 865; and A&T Lot 833 became A&T Lots 866 and 867.

review under Zoning Regulations §§ 1602.1 and 1610, which require Commission review of properties abutting M Street, S.E., properties located in Square 701, or properties that are the recipient of certain amounts of density through combined lot development rights (“CLDs”). In addition to the CG/CR Overlay District Review, the Applicant requested:

- Special exception relief with regard to the parking requirements of §§ 2116.2 and 2101.1 for the retail use on the South Parcel;
- Variance relief from the loading requirements of § 2201.1 for the office use on the Main Parcel and the retail use on the South Parcel;
- Variance relief from the rear yard requirement of § 636 for the residential and hotel structures on the Main Parcel; and
- Variance relief from the court requirements of § 638 for the residential structure on the Main Parcel.²

2. The purposes and objectives of the CG/CR Overlay District, as enumerated in § 1600.2, that are relevant to the proposed development include:
 - Assuring development of the area with a mixture of residential and commercial uses, and a suitable height, bulk, and design of buildings, as generally indicated in the Comprehensive Plan and recommended by planning studies of the area;
 - Encouraging a variety of support and visitor-related uses, such as retail, service, entertainment, cultural, and hotel or inn uses;
 - Requiring suitable ground-level retail and service uses and adequate sidewalk width along M Street, S.E., near the Navy Yard Metrorail station; and
 - Providing for the development of First Street, S.E., 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.
3. After proper notice was provided, the Zoning Commission held a hearing on the application on October 1, 2012. Parties to the case included the Applicant and Advisory Neighborhood Commission (“ANC”) 6D, the ANC within which the Property is located.
4. Witnesses appearing on behalf of the Applicant at the hearing were Jon Carr of Ballpark Square, LLC and Michael Kearney of SCD Acquisitions, LLC; expert witnesses appearing on behalf of the Applicant at the hearing were Devon Perkins of Hickok Cole Architects, Theresa Sheils of Gensler Architects, Don Hoover of Oculus, and Dan Van Pelt of Gorove/Slade Associates, Inc.
5. ANC 6D submitted a letter in support of the project noting that the Applicant “spent a great deal of time and energy presenting and listening to the community and [the ANC] regarding [its] plans.” (Exhibit [“Ex.”]15.) The ANC was “impressed by the [Applicant’s] dedication to green, quality, and diverse design, as well as [its] impressive

² This court variance relief was withdrawn by the Applicant in its pre-hearing submission on September 4, 2012 (Ex. 11.)

plans for bringing high-quality retail tenants to the properties . . . [and] hope[d] that the development team would continue to add features that show off the team's dedication to green design, such as exterior green walls, wind and solar power." (*Id.*) At the hearing, the Commission noted that the ANC letter was required to be on official ANC letterhead, and therefore an ANC letter of support was resubmitted accordingly. Such resubmitted letter reiterated the ANC's support of the project, noting its 6-0-1 vote to support the application. (Ex. 23.)

6. At the conclusion of the hearing, the Commission requested that the Applicant file a post-hearing submission containing information regarding the following: roof structure design; examples of the type of signage permitted as the result of being placed in the Designated Entertainment Area ("DEA") under the new District of Columbia Municipal Regulations governing signage; retail tenant design guidelines; and the levels of sustainability for the hotel component of the project. The Applicant submitted these materials to the Zoning Commission in its post-hearing submission dated October 15, 2012. (Exhibit 22.)
7. On November 14, 2012, the Commission voted to approve the application subject to the conditions enumerated in this Order.

DESCRIPTION OF PROPERTY AND SURROUNDING AREA

8. The Property is located on the southwest corner of the intersection of First and M Streets, S.E., in Southeast Washington. It is bound by M Street, S.E. to the north, First Street, S.E. to the east, N Street, S.E. to the south, and Cushing Place to the west. One block south of the Property is the Washington Nationals' Ballpark ("Ballpark"). Entrances to the Navy Yard Metrorail Station are located along M Street less than one block to the east of the Property and one block to the west of the Property. Capital Riverfront Hotel, LLC's development in Square 701 (pending before the Commission as Z.C. Case No. 12-19) splits the Property into the Main Parcel and the South Parcel and is not part of this Order. Immediately east of the Property is the mixed-use project which was approved by the Commission in Z.C. Case Nos. 06-46 and 06-46A.

PROJECT OVERVIEW

9. The Applicant proposes to develop the Property into a mixed-use development that includes residential, retail, hotel, and office uses along First and M Streets and retail frontage on First and N Streets. The Property will include approximately 260,000 square feet of residential use (approximately 285-290 units), approximately 224,000 square feet of office use, approximately 126,000 square feet of hotel use (approximately 170-180 units), and approximately 51,000 square feet of retail use (collectively, the "Project"). Consistent with §§ 1604 and 1606 of the Zoning Regulations, retail and restaurant uses are proposed for all of the ground-floor space in the Project (other than lobbies for the residential, hotel, and office components and related parking and service areas). The Project has a proposed building height of approximately 130 feet, occupies 74% of the

area above the first floor, and provides approximately 370-390 automobile parking spaces and approximately 107 bicycle spaces on the Property, with another approximately 20 bicycle parking spaces on the public space adjacent to the Property. The Project will have a floor area ratio ("FAR") of approximately 8.89. (Ex. 3, 11, and 17 and Applicant's presentation at the October 1, 2012 hearing ("Applicant's Presentation").)

10. On the Main Parcel, the massing of the building will be broken into three distinct areas. First, the office building will sit along M Street to the north. Second, the hotel will be situated south of the office building, but will be separated from the office use by a 30-foot-wide courtyard. Third, the residential building will be located south of the hotel and will be largely separated by an approximately 30-foot-wide court. Ground-floor connections will link the three use components at final completion of the Project. Parking in the two below-grade garages and all loading will be accessed via Cushing Place. The South Parcel, located at the corner of First and N Streets, will consist entirely of retail use. (Ex. 3, 11, 17, and 22 and Applicant's Presentation.)
11. The retail portion of the Project will be comprised of 51,000 square feet total, spread across the entire Property. Approximately 43,400 square feet of retail use will be provided on the Main Parcel and approximately 7,600 square feet of retail use will be provided on the South Parcel. The ground-floor retail will be demarcated from the uses above by metal banding. Each retailer will also be allowed to customize its space and hang its own signage within the general design parameters of the Project. The retail spaces will have ceiling heights of a minimum of 14 feet as required by the CG Overlay, making them marketable to a wide range of urban retailers. 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 Applicant envisions First Street including a restaurant, café, coffee shop, and other retailers that can serve the variety of users that frequent the area, such as tourists and businesspeople staying in the hotel, residents living in the building and nearby, and visitors on their way to the Ballpark. (Ex. 3, 11, 17, and 22 and Applicant's Presentation.)
12. The residential portion of the Project will include approximately 260,000 square feet (approximately 285-290 units) on the Main Parcel. The upper floors of the building are designed to capture the views of the Ballpark, other monumental views in the vicinity of the building, and the Anacostia River. The rooftop, complete with a pool and pool terrace, as well as a roof terrace facing the Ballpark, will provide a common leisure and social space for the Project's residents. The inner core of the building will face a landscaped courtyard that will provide a private outdoor recreation option. The residential building will incorporate materials of the highest quality as well as a color palette marking the building as a location in a burgeoning neighborhood of the Ballpark district. The primary materials used will be a reddish and light gray brick accentuated by brick, metal, and glass balconies. The building itself is designed in a U-shape to face the

southern edge of the Main Parcel to maximize the amount of light and air available in the units. The building entrance will be located on First Street. (Ex. 3, 11, and 17 and Applicant's Presentation.)

13. The Project's office portion will include approximately 224,000 square feet on the Main Parcel. In contrast with the residential building, the design of the office building will integrate with other office buildings along M Street. The details of the building's design and materials establish the office component's presence on M Street, while the intricately designed façade allows the office structure to be differentiated from the other buildings fronting on M Street. The office component will be a single mass that allows for significant and unique façade variations to add visual interest and break up the proposed mass. The facades will be largely curtain wall vision glass while also containing back painted spandrel glass. The façade will feature vision glass in framed areas to add an intriguing accent to the appearance. In addition, the office building is proposed to be set back from the northern property line such that the total width from the building's façade to the curb will be approximately 15 feet. Such setback satisfies the 15-foot required setback from M Street set forth in § 1604.3. The office building will feature a green roof and a roof deck to allow for office users to take advantage of the exceptional views of the Ballpark, Anacostia River, and monumental core of the District of Columbia offered from this location. The component's entrance will be located on M Street. The office building will include approximately 140-145 parking spaces in a four-story underground garage. The parking garage for the office component will be independent from the parking garage for the hotel and residential components. (Ex. 3, 11, and 17 and Applicant's Presentation.)
14. The Project will also include approximately 126,000 square feet of hotel use (approximately 170-180 units) on the Main Parcel. The hotel will provide a transition from the office portion of the Project along M Street to the residential portion closer to the Ballpark. The hotel use will be located in the middle of the site and have significant setbacks on both the north and south of the structure. The design will complement the appearance of the office and residential components while providing a varied set of colors and materials. The facades of the hotel will be primarily a light gray brick while the windows will be framed in painted aluminum. The structure itself will offer exceptional views and a roof top amenity space that will draw short term visitors to the Ballpark District. Similar to the residential component described above, the main entrance and lobby for the hotel component will be from First Street. (Ex. 3, 11, and 17 and Applicant's Presentation.)
15. Construction of the Project will be permitted to proceed in a phased fashion such that the construction of one or more of the primary components of the Project (*e.g.*, the residential, hotel, or office) may be constructed and/or completed before the other components are started, constructed, and/or completed. The building connections

between the building's use components and retail areas will not necessarily be complete until construction has finished in its entirety. (Ex. 22.)

REQUESTED AREAS OF ZONING COMMISSION REVIEW AND RELIEF

Satisfaction of CG Overlay

16. Under CG Overlay District Review, the Applicant must prove that the Project satisfies the requirements of §§ 1604, 1606, 1610.3, and 1610.5, in addition to § 3104, because the Property has frontage along M Street and First Street, S.E. The following paragraphs address the Applicant's satisfaction of these standards.
17. Under § 1602.1(e), the Commission may approve the use of CLDs to achieve an additional transfer of density of up to 1.0 FAR to Square 701 provided that the applicant satisfies the objectives and guidelines of §§ 1601 and 1604–1607, as applicable. The Project proposes an additional CLD transfer of approximately 0.39 FAR of CLD density under § 1602.1(e). The proposed Project complies fully with § 1601. Sections 1605 and 1607 are not applicable to the Property because those two Sections regulate projects fronting on South Capitol Street and Half Street, respectively.
18. Sections 1604 and 1606 govern projects fronting on M Street, S.E., and First Street, S.E., and apply to this Project. The Project conforms to the requirements of those two Sections and furthers the Sections' objectives. As a whole, the Project achieves those Sections' objectives because the Project delivers an even greater amount of preferred uses than are required. Further, the design of the Project's façades will foster an interactive pedestrian experience that capitalizes on its location adjacent to the Navy Yard Metro Station and the emerging Ballpark District. (Ex. 3, 11, and 17 and Applicant's Presentation.)
19. Subsection 1604.2 prohibits the construction of new driveways along M Street. The Project will not include any such new driveways, and all vehicular access to the Project will be via the existing Cushing Place alley. (Ex. 3, 11, and 17 and Applicant's Presentation.)
20. Pursuant to § 1604.3, the streetwall along M Street, S.E., must be set back at least 15 feet along the entire frontage of that street. As noted above, the streetwall of the office and retail component of the Project along M Street will be set back from the curb of that street by a width of 15 feet. (Ex. 11 and 17 and Applicant's Presentation.)
21. Under §§ 1604.4, 1606.2, and 1606.3, each new building fronting along either M Street or First Street must devote a minimum percentage of the gross floor area of the ground floor to certain preferred uses including retail, entertainment, and service uses. Such preferred uses will occupy 100% of the Project's street frontage along both First and M Streets except for the space devoted to the office building lobby entrance and fire control and approximately 81% of the ground-floor area for the Project in total. This Project will

not include any of the uses prohibited under these Subsections. (Ex. 3, 11, and 17 and Applicant's Presentation.)

22. Subsection 1604.6 recites that at least 50% of the surface area of the streetwall along M Street must be devoted to display windows having clear or low-emissivity glass. 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. (Ex. 3, 11, and 17 and Applicant's Presentation.)
23. Subsections 1604.7 and 1606.4 both provide for a minimum floor-to-ceiling height for ground-floor preferred uses. The Project's ground-floor preferred uses will have a minimum floor-to-ceiling height of 14 feet. (Ex. 3, 11, and 17 and Applicant's Presentation.)
24. Pursuant to § 1610.3(a), the Applicant is required to prove that the Project will help achieve the objectives of the CG Overlay District. This Project, including its building uses, siting, architecture, landscaping, sidewalk treatment, urban design, and operation will achieve several of the objectives of § 1600.2. The Applicant is proposing a mixed-use development that will include a significant residential component, commercial office space, a hotel component, and a variety of preferred retail uses. Consistent with § 1600.2(a), the height and density of the Project are suitable for the CG/CR Overlay District because the Project is within the limits of the Overlay District's height and density parameters. Moreover, the Project is consistent with the area's high density residential and high density commercial designation under the Comprehensive Plan. Subsection 1600.2(b) encourages support and visitor-related uses such as retail and hotel uses, both of which are included in the Project. In addition, consistent with § 1600.2(e) the Project will include ground-level retail and service uses and wide sidewalks along M Street. As noted above, the Project will be set back from M Street by 15 feet, which is in accordance with the setback required under the Zoning Regulations. Similarly, the ceiling heights of the retail space will have at least 14 feet of clearance, which is in accordance with §§ 1604.7 and 1606.4. Finally, consistent with § 1600.2(i), the Project will help to create an active pedestrian zone along First Street, between M Street, the Metrorail station, and the Ballpark by adding new retail and service uses, full-time residents, office workers, and visitors who will occupy the Project's hotel rooms. (Ex. 3, 11, and 17 and Applicant's Presentation.)
25. In accordance with § 1610.3(b), the proposed building will help achieve the desired mix of uses in the CG Overlay District as set forth in § 1600.2 (a) and (b). As described more specifically above in Paragraphs 9 through 14, the Project will include residential, hotel, entertainment, retail, and service uses. The approximately 285-290 residential units will include a mix of unit types (studios, one-bedroom, two-bedrooms, and two-bedroom with den) that will attract a diverse resident base. The retail will likely accommodate entertainment and retail uses. The hotel use will bring visitors – both personal and

business travelers – to the Ballpark district to patronize local establishments and add a consistent flow of new energy to the area. (Ex. 3, 11, and 17 and Applicant's Presentation.)

26. Pursuant to § 1610.3(c), the proposed building will be consistent with the context of the surrounding neighborhood and street patterns. The Project 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 by prohibiting curb cuts along the surrounding streets. The Project will utilize the alley for all parking and loading access. The development will serve as a pedestrian and visitor gateway between the Navy Yard Metro Station, particularly the eastern entrance thereof, and the Ballpark. Moreover, the design of the Project will be different, yet complementary to the surrounding neighborhood. The contemporary design of the office component of the Project, with the uniquely varied glass and coloring along the building's façades, is contrasted with the relatively unvaried façades on the north side of M Street. This contrast will add interest and liveliness to the streetscape experience along M Street as pedestrians enter and exit the Capitol Riverfront District, and the Ballpark itself. Similarly, the residential and hotel components will be uniquely designed in each case such that each of the three "tower" structures appears as a separate use and design approach. 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, interrupted only by entrances accessing the upper floors of the towers themselves. The proposed building design respects the existing street grid and is in context with the surrounding neighborhood and street patterns. (Ex. 3, 11, and 17 and Applicant's Presentation.)
27. Also pursuant to § 1610.3(c), the Project is sympathetic to the context created by its immediate neighbors. The property to the west, southwest, and south of the Project has been approved for a mixed-use development of varying, but similar, densities and heights. When finished, that neighboring development will include residential, retail, office, and hotel uses. To date, only the office portion of such building has been constructed (55 M Street, S.E.). The properties to the north of the site are office buildings with ground-floor retail. To the west of the Project, across First Street, sits a seven-story Federal mapping agency building and a large surrounding parking lot. The Project keeps with the scale of density and height of the surrounding buildings and fits appropriately into that context. The building 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. (Ex. 3, 11, and 17 and Applicant's Presentation.)

28. Satisfaction of § 1610.3(d) requires that the proposed building minimize conflict between vehicles and pedestrians. The proposed design promotes a safe and efficient pedestrian experience, especially along First and M Streets which are two primary pedestrian corridors within the CG Overlay. Per the CG Overlay District Review regulations, no new curb cuts may be established along First or M Streets. The proposed building will eliminate four existing curb cuts along First and M Streets. Access to parking and loading for the entire development will be from Cushing Place, the alley at the west of the Property. Eliminating curb cuts along the main pedestrian corridors will reduce the possibility of vehicular and pedestrian conflicts. In addition, the Applicant's traffic consultant, Gorove/Slade Associates, Inc., determined that the alley would function acceptably, even if 55-foot trucks arrived in such alley, as shown on the memorandum attached as Tab D to Ex. 22 of the record. (Ex. 3, 11, 17, and 22, Tab D and Applicant's Presentation.)
29. In accordance with § 1610.3(e), the proposed building minimizes unarticulated blank walls adjacent to public spaces through façade articulation. The façade articulation will be accomplished through different methods in the case of each of the "towers" of the Project. Primarily, the articulation will be achieved by the use of building materials and display windows along the ground floor. However, the residential component also will include projections through a series of balconies and bays. These proposed projections will provide direct views into the stadium for many residents of the Project along with sweeping views of the burgeoning Ballpark area. The office component will apply for projections as well, as described in this Order. Special attention has been given to the façades facing the Project's alley, and as much detail has been added to such alley-facing façades as has been added to those façades facing the more prominent right of ways. (Ex. 3, 11, 17, and 18 and Applicant's Presentation.)
30. Subsection 1610.3(f) requires that the proposed building minimize the impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards. The office and residential components of the building will meet LEED Gold and Silver certification standards for new construction, respectively. Some of the key "green" features will include low-emitting materials, water efficient landscaping, water conservation fixtures, recycled building materials and similar elements. In addition, the environmentally sustainable residential development creates a livable transit-oriented community adjacent to the Navy Yard Metro Station, with a significant amount of 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. The Applicant will develop the hotel as sustainably as possible, but currently no operator or partner of the hotel has been identified to finalize the level of sustainability. (Ex. 3, 11, 17, and 22 and Applicant's Presentation.)

31. Under § 1610.5(a), a new building along First Street, S.E., must 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. The proposed building design encourages pedestrian activity along its First and M Street frontages and provides safe and active streetscapes. This is achieved through building articulation, thoughtfully landscaped and hardscaped spaces in the adjacent public space, the provision of ground-floor retail, variable depth retail areas, and electronic signage. To further facilitate the pedestrian activity along those frontages and to minimize vehicular and pedestrian conflicts, the Applicant provides vehicular access to its garage and its loading areas via Cushing Place. (Ex. 3, 11, and 17 and Applicant's Presentation.)
32. Pursuant to § 1610.5(b), new buildings must provide for safe and convenient movement through the site and to public transit, the Ballpark, and the Anacostia Riverfront. This Project achieves these circulation objectives. The Project's primary pedestrian pathway will be along First Street, which is currently an often forgotten or ignored link between the Navy Yard Metrorail Station and the Ballpark. While Half Street is the main access way to the Ballpark for pedestrians, the Project aims to create another exciting option for Ballpark visitors along with a unique place to live for its residents. The Project's ground-floor retail along First and M Streets will make for an interactive and exciting pedestrian experience for those attending a ballgame as well as for those seeking a shopping experience. Additionally, the landscaping, lighting, the transparent display glass of the ground-floor retail, and overall increased activity will enhance the pedestrian safety. Just as the development of First Street encourages pedestrian activity to reach the Ballpark, it also provides safe and convenient access to the Anacostia Riverfront. In addition, the Project fosters a developing community that will invite even more people to utilize the Ballpark-area Metro stations before, during, and after games and even in the off-season. Moreover, the Project's emphasis of retail along First Street will encourage use of the eastern Navy Yard Station entrance, which is rarely used for games. (Ex. 3, 11, and 17 and Applicant's Presentation.)
33. Finally, consistent with § 1610.5(c), applications for development under CG Overlay District Review must include a view analysis that assesses the openness of views towards and vistas around, the Capitol Dome, other federal monumental buildings, the Ballpark, and the waterfront. The Project will not block or detract from the view of the Capitol, other federal monumental buildings, the waterfront, or the Ballpark. Rather, the superior design of the Project will provide a favorable view for tenants and residents of neighboring buildings, and visitors to the Ballpark. The Project will add a great degree of visual interest to the Capitol Riverfront by introducing three individual, unique, and complementary designs to a podium of exciting retail options. (Ex. 3, 11, and 17 and Applicant's Presentation.)

Special Exception Relief – Parking

34. The Applicant sought special exception relief pursuant to §§ 3104 and 2116.5 from the location of parking spaces required § 2101.1. The Applicant noted that the four parking spaces required for the retail use of the South Parcel are provided on the nearby record lot, the Main Parcel. In order to obtain relief under § 3104, the special exception must be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and must not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps. Further, such relief must be in accordance with § 2116.6 through 2116.9. As described below, the Applicant's request satisfies all such requirements for this special exception relief.
35. Pursuant to § 2116.5, the Applicant sought relief from §§ 2101.1 and 2116.2. Subsection 2101.1 (in combination with the parking reduction of § 2104) requires that the approximately 7,600 square feet of retail space on the South Parcel provide four parking spaces. Subsection 2116.2 requires that such parking spaces be provided on the record lot where the use generating such requirement is located. Subsection 2116.5 provides an exception to §§ 2101.1 and 2116.2 as long as the parking conforms to § 2116.6 through 2116.9.
36. Under § 2116.6, in order to grant the requested special exception relief, the Applicant must prove that the spaces required under § 2116.2 cannot be located as required for any one of four reasons. One such reason is that the location of the required parking spaces on another lot results in a more efficient use of land and less impact on neighboring properties. The Project will locate the four required parking spaces for the retail use of the South Parcel within the below-grade parking provided on the Main Parcel. Locating the required parking on the Main Parcel with the parking for the development on the Main Parcel is more efficient than locating just four spaces on the South Parcel. Moreover, these four parking spaces cannot be provided on the South Parcel because no curb cut or alley access exists by which vehicles could access the South Parcel. While curb cuts in any project are often strongly disfavored in the District, curb cuts are even more strongly discouraged under CG Overlay District Review and likewise are not allowed on First Street. Eliminating the need for a curb cut for the South Parcel avoids adverse impacts on the neighboring properties. In addition, such parking spaces would be an inefficient use of the first floor of the property, where the Applicant wishes to provide the maximum area for retail use. Such retail use immediately across N Street from the Ballpark is in accordance with the District's desired uses for this area. The lack of parking for the retail use on the South Parcel does not undermine the health, safety, morals, convenience, order, prosperity, or general welfare of the District. In fact, less parking helps achieve the goals of the Zoning Regulations for the South Parcel. Further, excavating a parking garage for four parking spaces would not be advisable or cost-efficient, particularly when the applicant is able to provide such spaces only feet away. (Ex. 3, 11, and 17 and Applicant's Presentation.)

37. Subsection 2116.7 notes a preference for locating parking on adjacent lots or lots separated only by an alley when parking spaces are located anywhere other than on the lot which the parking serves. Here the Main Parcel and the South Parcel share an alley and are separated only by approximately 58 feet. The employees or patrons of the South Parcel retail utilizing the four parking spaces will proceed along either the alley or the sidewalk on First Street to access the South Parcel. Because the adjacency and alley way preferences under this Subsection are merely preferences and not requirements, siting the South Parcel's parking spaces on the Main Parcel is consistent with the Zoning Regulations. (Ex. 3, 11, and 17 and Applicant's Presentation.)
38. Subsection 2116.8 requires that parking be reasonable and convenient if the parking is not located on the lot of the building that the parking serves. Here the Main Parcel's parking garages are both reasonable and convenient for serving the guests and employees of the South Parcel insofar as the Main Parcel's parking is approximately 58 feet from the South Parcel. (Ex. 3, 11, and 17.)
39. Finally, under § 2116.9, conditions may be imposed on the parking spaces located off site if necessary to protect adjacent or nearby properties. Here, no such conditions are necessary because the Project contains adequate parking and is well-served by transit and because an objective of the CG/CR Overlay District is to create a pedestrian-friendly experience, which necessitates reducing parking burdens. (Ex. 3 and 11.)
40. The requested relief is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The general purpose and intent of the Zoning Regulations and Zoning Maps is to promote the public health, safety, morals, convenience, order, prosperity, and general welfare. (11 DCMR § 101.1.) Specifically, the requested relief must take into consideration the character of the respective districts as well as the suitability of each district for the uses permitted. The requested relief must be designed to encourage the stability of districts and of land values. (*Id.* at § 101.2.) The relevant sections of the Zoning Regulations provide guidelines, described in more detail below, by which to evaluate whether a special exception should be granted. (Ex. 3 and 11.)
41. The requested relief of providing four parking spaces for the South Parcel on the Main Parcel will not affect adversely the use of any neighboring property. The requested relief will merely shift the parking requirement from one record lot to another nearby lot in the same Square 701. To the contrary, the Applicant reduces the possibility of adversely affecting neighboring property owners by eliminating the need for one or more additional curb cuts while allowing for a more efficient parking arrangement for the retail uses provided at the Project. The request is only for four parking spaces, and is therefore *de minimis*. (Ex. 3, 11, and 17 and Applicant's Presentation.)

Variance Relief

42. In order to receive 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. Findings related to the first part of the variance test are presented in the following paragraph. Findings related to the second and third parts are presented in the sections below with each element of requested relief.
43. As to the first prong of the test, a number of exceptional conditions affect the Property, and the Property meets the “exceptional conditions” element of the variance test. The 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 exceptional conditions include:
- The Property is large (at nearly 80,000 square feet) and deep (the east/west dimension is nearly 160 feet);
 - The Project is unique in that it includes the Main Parcel, with a three-tower component, and the South Parcel, approximately 58 feet to the south;
 - The Project is located at the intersection of two important streets, M Street and First Street, each with a separate set of requirements, in the CG/CR Overlay District, which requires a mixture of uses and dictates design features with which the Applicant must comply simply as a result of its presence on both such streets. 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 because a large number of driveways and service-related areas would stifle the street life. The Zoning Regulations applicable for this Property include a prohibition on curb cuts on two sides of the Project, substantial percentages of ground-floor retail with elevated ceiling heights, and the requirement to provide a “pedestrian scale” building with large setbacks from the curb;
 - The Applicant also proposes to include four different types of uses on the Property, which is encouraged by the Zoning Regulations but introduces considerations regarding construction feasibility; and
 - Finally, the Property is located directly north of the Ballpark, which requires a building design that is cognizant of the building’s singular context and respectful of the District of Columbia’s objectives for development in and around the Ballpark. (Ex. 3, 11, and 17 and Applicant’s Presentation.)

Variance Relief – Loading

44. The Applicant requested variance relief from the loading requirements under § 2201.1 for the South Parcel retail use and the Main Parcel retail and residential uses. Subsection 2201.1 requires the Applicant to provide one 30-foot loading berth and a single 100 square foot loading platform for the South Parcel’s retail, and, among other loading facilities, one 55-foot loading berth for the residential use and one 55-foot loading berth for the retail use on the Main Parcel.
45. The Project will provide no loading on the South Parcel, and 30-foot loading berths for the residential and retail components rather than the two required 55-foot berths. The Project will provide one of the required 30-foot berths for the office component on the hotel and residential component of the Project. (Ex. 3, 11, and 17 and Applicant’s Presentation.)
46. Under the second part of the variance analysis set forth in Paragraph 42, a practical difficulty exists in satisfying the strict application of the Zoning Regulations’ requirements with respect to loading on both the Main Parcel and the South Parcel. Strict compliance with the Zoning Regulations is burdensome for the following reasons:
- The Project contains a unique mix of four distinct uses, each of which generates a separate loading requirement. The Applicant will provide all necessary loading berths on the Main Parcel, but two of them will not be as long as required under the Zoning Regulations;
 - If the Applicant were to provide the additional loading spaces, such an alteration would require more ground-floor space and would reduce the square footage of preferred retail uses in the Project required by §§ 1604.4 and 1606.2. Additional loading spaces would also be a greatly inefficient use of the Property. In addition, the residential units or the retail tenants are unlikely to demand a 55-foot loading berth; and
 - The South Parcel is too small and “landlocked”— lacking curb cuts and alley access — to provide loading for the small retail establishment that will be constructed thereon. In addition, it would be inefficient to devote any of the approximately 3,600 square feet of area of the South Parcel to loading facilities, when the loading facilities located in the Main Parcel could instead be utilized.
- (Ex. 3, 11, and 17 and Applicant’s Presentation.)
47. Consistent with the third part of the variance test elaborated in Paragraph 42, relief from the loading requirements can be granted if such relief occurs without substantial detriment to the public good and without impairing the intent, purpose and integrity of the “zone plan.” The proposed design supports the intent of the CG Overlay District Review regulations and furthers the objectives of § 1600.2. The reduction in loading facilities and the depth of the residential and retail loading berth will not burden the neighbors or neighboring road network. There is not a demand for these additional (or

larger) loading facilities, and the reduced loading facilities proposed by the Applicant are sufficient to satisfy the loading needs of the mixed-use Project. There will be no adverse impact on neighboring properties from a back-up of trucks or from trucks loading from the streets. (Ex. 3 and 11 and Applicant's Presentation.)

48. The Applicant retained Gorove/Slade Associates, Inc. as its traffic consultant to prepare a traffic impact study. The study addressed the sufficiency of the loading facilities provided in the Project and found such loading facilities to be adequate. This conclusion was further bolstered by the Gorove/Slade report in its October 15, 2012 report attached as Tab E to the Applicant's post-hearing submission, included as Exhibit 22 in the record. Such report, compiled in response to the questions of the Commission at the hearing, concluded that no adverse transportation conditions would be created by the proposed use of the alley. (Ex. 3 Tab E, Exhibit 11, Tab B; and Exhibit 22, Tab E and Applicant's Presentation.)

Variance Relief – Rear Yard

49. The Applicant requested variance relief under § 636 of the Zoning Regulations from the rear-yard requirements for the residential portion of the Main Parcel.
50. Section 636 requires the proposed building provide a rear yard of three inches per foot of height for each residential structure. Because the building's façade's height is 115 feet, a 28-foot, nine-inch rear yard would be required. However, the Project will not provide a rear yard. Instead, the Project will provide three courts in lieu of a rear yard of 30 feet, 30 feet, and 66 feet in width. (Ex. 3, 11, and 17 and Applicant's Presentation.)
51. The strict application of the Zoning Regulations' requirements with respect to the rear yard of the residential component on the Main Parcel would create a practical difficulty. Strict compliance with the Zoning Regulations is burdensome for the following reasons:
- The Project contains a unique mix of four distinct uses, three of which include a "tower" element to meet the density objectives of the CG/CR Overlay District. The inclusion of such tower elements renders impracticable furnishing the required rear yards for the residential and hotel components. To require the full rear yard of 28 feet, nine inches would necessitate eliminating a significant portion of the hotel and residential buildings, which would detract from the appeal of the buildings, and the viability of the Project;
 - Providing a compliant rear yard would also push the uses closer together, whereas the Project has been designed to maximize the space between the use components through courts; and
 - The Project provides a 15-foot setback from M Street in order to give more room for pedestrian activity in the public realm, an objective of the CG/CR Overlay District. In meeting the objectives of activating the public realm, the Zoning Regulations create a burden in also meeting the rear yard requirements.

(Ex. 3, 11, and 17 and Applicant's Presentation.)

52. Under the third part of the variance test described in Paragraph 42, 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 would have achieved. Such varied structures creating three different vertical elements are consistent with the design guidelines and objectives of the CG/CR Overlay District. No neighbor will be adversely impacted by the provision of these courts rather than a compliant rear yard. Similarly, no views of monuments, the Ballpark or the Anacostia will be impeded 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 be inconsistent with the desired urban design of the Ballpark district. (Ex. 3, 11, and 17 and Applicant's Presentation.)

GOVERNMENT REPORTS

53. OP noted in its September 21, 2012 report ("OP Report") that the Project "successfully addresses many of the criteria" of the CG Overlay District Review regulations. OP supported the Project, particularly the residential building's incorporation of balconies on the First Street façade, highly customized façades at ground level for retail tenants, and the overall massing and design of the Project. OP found that the Project would generally create an active pedestrian and transit-oriented environment and a vibrant entertainment district. OP's analysis of the Project compared to the design review criteria of §§ 1600.2, 1604, 1606, and 1610 consistently supported the Project, and OP did not oppose granting the Project an additional 1.0 FAR of CLD density. Likewise, OP did not object to any of the requested variance or special exception relief. However, OP requested additional information regarding bicycle parking, ground-level retail design detail along M Street, loading operations for the South Parcel, information on the suggested signage and related lighting standards, access to retail parking, and hotel valet operations. (Ex. 12.)
54. At the October 1, 2012 Zoning Commission hearing and through its post-hearing submission, the Applicant addressed the additional OP information requests and OP voiced support for the Project. (Ex. 22 and Applicant's Presentation.)
55. The District Department of Transportation ("DDOT") submitted a report into the record on September 21, 2012. DDOT concluded that the design review and requests for special exception and variance relief will not adversely impact the surrounding transportation network provided that: (1) the Project includes a minimum number of bicycle parking spaces; (2) the Applicant submits an approved loading plan for the South Parcel; (3) the Project incorporate DDOT's recommended transportation demand measures ("TDM");

and (4) the Applicant implements a monitoring program to evaluate vehicle trip generation. (Ex. 13.) At the hearing on October 1, 2012, DDOT indicated its support for the application.

56. In its report and at the hearing, DDOT noted that the proposed program analyzed in the Applicant's Transportation Impact Study ("TIS") varied slightly from the program submitted to the Commission in the Applicant's submission for design review. DDOT determined that the slight variations do not affect the overall conclusions of the analysis. DDOT also agreed with the assumptions and methods used in the Applicant's TIS. (Ex. 13.)
57. In its report and at the hearing, DDOT noted that the Applicant did not state the number of bicycle parking spaces for the Project or identify where on the Property bicycle parking will be accommodated. DDOT concluded the Project requires 19-20 bicycle parking spaces given the proposed level of parking and recommended that the Project include two or three bicycle racks at each proposed building entrance. (Ex. 13.)
58. DDOT supported Applicant's proposed TDM, which included: unbundling parking costs from lease prices; setting parking prices at rates no less than those within a quarter mile of the Project; posting TDM commitments online; identifying a TDM leader for the Project; providing an on-site business center for residents; installing information centers within lobbies; dedicating two parking spaces for car sharing; providing reserved parking for carpooling or vanpooling; and hosting a transportation fair for residents and tenants once the buildings have opened. (Ex. 13.)
59. During the October 1, 2012 hearing, DDOT voiced support for the Project and stated that it had received the requested information specified in its report. DDOT stated that it would work with the Applicant through the public space permitting process to create a loading plan for the South Parcel. The Applicant submitted its traffic consultant's responses to the DDOT report into the record. (Ex. 22, Tab E.).

ADVISORY NEIGHBORHOOD COMMISSION REPORT

60. The ANC voted 6-0-1 on September 10, 2012 to support the Project. As noted above in Paragraph 5, the ANC had positive comments regarding the Project and the Applicant. (Ex. 15.) The ANC noted its preference for additional "green" features, many of which appear in the Project, and otherwise largely supported the Project. At the request of the Zoning Commission, the ANC resubmitted a letter on its official letterhead reiterating its support of the application. (Ex. 15 and 23.)

PARTIES IN SUPPORT OR OPPOSITION

61. No other parties appeared at the hearing to support or oppose the Project.

POST-HEARING SUBMISSION

62. As requested by the Commission, on October 15, 2012, the Applicant submitted the following information in its post-hearing submission:

- The roof structures of the residential and hotel portion of the Project were revised to reduce the size of the roof structures and remove portions of the trellis fronting on 1st Street, N.E. The Applicant added articulation to the roof structures and blended such improvements into the main structures and reduced and removed up-lighting on the roof;
- Further information about the DEA and the ground-floor retail tenant design guidelines at the Project;
- Further information regarding the sustainability of the hotel construction. The Applicant reiterated its desire to design and construct as sustainable of a hotel component as possible, although was unable to commit to a specific level given the lack of a hotel partner or operator;
- Additional information relating to the operation of the 30-foot alley behind the Project and the curb-side loading proposal for the South Parcel retail uses;
- Additional information relating to the bicycle parking at the Project consisting of the following:
 - Streetscape – There will be a total of 10 bike racks throughout the site located in the public space adjacent to the Project. These 10 bike racks will accommodate a total of twenty 20 public bicycle parking spaces on the site;
 - Residential and hotel component – The residential structure has a total of 57 bicycle parking spaces. Thirty-three of such spaces will be located on the P1 parking level and 24 spaces on the P2 parking level;
 - Office component – The office structure has a total of 50 bicycle parking spaces and these will be located on the P1 parking level; and
- Information regarding the potential phasing of the office component and the residential and hotel component.

(Ex. 22.)

CONCLUSIONS OF LAW

1. The Commission finds that, pursuant to § 1610.3 of the Zoning Regulations, the Applicant must satisfy the burden of proving the elements necessary to receive design review approval of the Project under §§ 1604, 1606, 1610.5, and 3104. In addition, the Applicant must establish its case for special exception relief pursuant to § 2115.6 for parking on the South Parcel. Finally, the Applicant must also carry its burden to receive variance relief from (a) the loading requirements of § 2201.1, and (b) the rear yard requirements of § 636.
2. The Commission is authorized to grant area variance relief under the Zoning Regulations. 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. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990).
3. The D.C. Court of Appeals held in *Clerics of St. Viator v. Bd. of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974) that the exceptional situation or condition standard goes to the “property”, not just the “land”; and that “....property generally includes the permanent structures existing on the land. [Footnote omitted].” In the *Clerics of St. Viator*, the Court held that the exceptional situation standard of the variance test may be met where the required hardship inheres in the land, or the property (i.e., the building on the land).
4. The DC Court of Appeals defined “practical difficulty” in *Palmer v. Bd. of Zoning Adjustment*, 287 A. 2d 535, 542 (D.C. 1972) as the following: “[g]enerally 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. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1365 (D.C. 1992), citing *Gilmartin v. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).
5. 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. Bd. of Zoning Adjustment*, 358 A. 2d 326, 327 (D.C. 1976). See also, *Tyler v. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992). The *Gilmartin* case also notes three factors that can be used to determine whether the unnecessarily burdensome/ practical difficulty standard has been satisfied. These include: (a) the weight of noncompliance; (b) the severity of the variance requested; and (c) the effect the proposed variances would have on the overall zone plan.

Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible. The Applicant has carried its burden to demonstrate each of these three factors for each area of relief requested.

6. 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 the ANC, OP, and to owners of property within 200 feet of the site.
7. The proposed Project 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 Commission notes that the Applicant will enter into CLD covenants pursuant to Chapter 16 and § 1602.1(a) and (e), to achieve this density and mix of uses. The Commission approves the additional density in excess of 8.5 FAR as the Applicant has provided sufficient evidence that the Project satisfies the objectives and guidelines of §§ 1601, 1604, and 1606. The residential, office, hotel, and retail uses are appropriate for the site. The proposed development has been appropriately designed to complement existing and proposed buildings adjacent to the site, with respect to height and mass.
8. Approval of the proposed development is not inconsistent with the Comprehensive Plan.
9. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give “great weight” to the issues and concerns raised in the written report of the affected ANC. As is reflected in the Findings of Fact, at its duly noticed meeting held on September 10, 2012, ANC 6D, the ANC within which the Subject Property is located, voted 6-0-1 in support of the application for CG Overlay District review. The Commission found this advice to be persuasive.
10. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of the Office of Planning in all zoning cases. The Commission has considered OP’s recommendation for approval of the application and found its advice to be persuasive.
11. Based upon the record before the Commission, having given great weight to the views of the ANC and having considered the reports and testimony OP and DDOT provided in this case, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under §§ 1610 and 3104, the burden for the special exception, and the burden for all of the variances requested. The Commission finds that the Project fully satisfies the goals and objectives of the CG Overlay District Review. The Commission finds that the Property is subject to exceptional conditions as outlined in the Applicant’s application and pre-hearing statement and as presented at the public hearing. The Commission agrees that the Applicant faces practical difficulties satisfying the strict

application of the Zoning Regulations with regard to: (a) the loading requirements of § 2201.1 and (b) the rear yard requirements of § 636. The Commission agrees with the Applicant's written statements and testimony at the public hearing that it would be unnecessarily burdensome for the Applicant to satisfy these requirements. The Commission also finds that granting this variance relief will not cause substantial detriment to the public good and the variances can be granted without impairing the intent, purpose, and integrity of the Zone Plan. The Commission also finds that the requested special exception relief pursuant to §§ 3104 and 2116.5 from the schedule of requirements for parking spaces under § 2101.1 can be approved, since such relief is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and does not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Maps and is in accordance with § 2116.6 through 2116.9.

12. The Commission finds that granting the requested special exception and variance relief will create a building of significant architectural quality that will further the goals of the CG Overlay District and will create a new entertainment, retail, office, and residential destination in the District of Columbia.
13. The application for CG Overlay District Review will promote the orderly development of the site in conformity within 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 Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL**, consistent with this Order, of the application for CG Overlay District Review, special exception, and variance relief. This approval is subject to the following guidelines, conditions, and standards:

1. The Project shall be built in accordance with the architectural plans, elevations, and materials submitted in the record of Z.C. Case No. 12-05 as Exhibit 3, Tab A; Exhibit 11, Tab A; Exhibit 17; Exhibit 18; and Exhibit 22, Tab A, as modified by the guidelines, conditions, and standards below.
2. The overall maximum permitted density shall be approximately 8.89 FAR. In order to achieve the maximum permitted density, the Applicant shall comply with the process set forth under §§ 1602.1(a) and 1602.1(e) of the Zoning Regulations.
3. The maximum permitted height of the building shall be 130 feet. The Project in its entirety shall include approximately 260,000 square feet of residential use (approximately 285-290 units), 224,000 square feet of office use, approximately 126,000 square feet of hotel use (approximately 170-180 units), and approximately 51,000 square feet of retail use.

4. A minimum of 75% of gross floor area on the ground floor shall be devoted to preferred uses as defined in §§ 1604 and 1606.
5. The Applicant shall include in each lease for a retail tenant a requirement that the lessee abide by the Retail Tenant Design Guidelines attached as Attachment 1 to Exhibit 25 of the record.
6. The Applicant shall provide sustainable building design features such that the office component of the Project will qualify for certification for at least a LEED Gold structure, while the residential component of the Project will qualify for certification for at least a LEED Silver structure.
7. The Project shall include between 370 and 390 parking spaces. The Applicant shall have the flexibility to make alterations to the parking garage design and to reduce the number of parking spaces per market conditions and demand for parking spaces, provided that no less than the number of parking spaces required by the Zoning Regulations is provided on the Property. The Project must also include at least 19 to 20 bicycle parking spaces, per DDOT's report dated September 21, 2012.
8. The Applicant shall implement the TDM set forth in Paragraph 58 of the Findings of Fact.
9. With respect to the design of the Project, the Applicant shall have flexibility to:
 - Vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the buildings;
 - Vary the final selection of the exterior materials within the color ranges and material types (maintaining the same general level of quality) as proposed, based on availability at the time of construction;
 - Make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Construction Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
 - Vary the exterior design and materials of the ground-floor retail space based on the preferences of the individual retailer, in accordance with the retail tenant design guidelines submitted as Exhibit 22, Tab C. The Applicant will not permit the individual retailer to modify the building footprint, or reduce the quality of the materials used on the exterior of the ground floor of the Project, as shown in the plans submitted with this application. The Applicant and all tenants of the Project

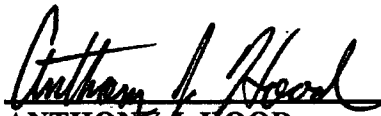
- will comply with the requirements of Chapter 16, except as otherwise approved by this Order;
- Install and modify the “DEA” signage proposed in the application and to alter the content of the signage areas shown on the plans submitted as part of this application, provided that such signage is consistent with the locations and dimensions illustrated on such plans submitted in this application and with the D.C. Construction Code, as it is to be amended subsequent to the date of this Order;
 - Modify the façade of the office component of the Project to include projections of up to one foot, one inch along M Street, N.E. and up to four feet along 1st Street, N.E., as shown as shown on the rendering of the office component projections submitted during the hearing as Exhibit 18; and
 - Make minor adjustments to the site plan, including such areas as the loading areas and driveway, if necessary.
10. The Zoning Administrator shall have the flexibility to make minor modifications to the final plans as approved by the Commission. These modifications shall include the following:
- A change not to exceed two percent in the percentage of lot occupancy or gross floor area of the building; and
 - A change not to exceed two percent in the number of residential units or gross floor area to be used for commercial uses.
11. This Order shall be valid for a period of three years from its effective date. Within such time, an application must be filed for a building permit for the construction of the office, hotel, or residential component of the Project. The filing of this or any subsequent building permit application will vest the Order as to that component provided that the subsequent application is filed within five years of the issuance of the final certificate of occupancy for the first component of the Project. Any request for an extension of time shall be filed and decided pursuant to 11 DCMR § 2408.10 through 2408.11.
12. Subject to the timing requirements set forth in Paragraphs 15 and 62 of the Findings of Fact in this Order, the Project may proceed in a phased fashion. The ground-floor connection between the residential, hotel, and office uses need only be completed once the entirety of the building is constructed. If the hotel and residential component of the Project proceeds prior to the office component of the Project, the hotel and residential component may use M Street as the measuring point for height until the remainder of the Project is constructed without any temporary structure(s) or building connection(s) being constructed on the office component.

For the reasons stated above, the Commission concludes that the Applicant has met its burden, and it is hereby **ORDERED** that the application be **GRANTED**.

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On November 14, 2012, upon the motion of Commissioner Turnbull, as seconded by Vice Chairperson Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt; Robert M. Miller, not having participated, not voting).

In accordance with the provisions of § 3028 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register* on December 21, 2012.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING