

May 11, 2006

VIA HAND DELIVERY

Zoning Commission of the District of Columbia  
One Judiciary Square, Suite 210-South  
441 Fourth Street, N.W.  
Washington, D.C. 20001

Re: ZC Case 06-03: Applicant's Pre-Hearing Statement (100 M Street, S.E.)

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Honorable Members of the Commission:

Enclosed please find Applicant's Pre-Hearing submission relating to our Application for approval under § 1604 of the Zoning Regulations for project review for a project located along a portion of M Street, S.E., that is within the Capitol Gateway ("CG") Overlay District. The submission consists of a bound narrative document and a separate set of plans. In addition, this submission includes vitae for three witnesses proposed as experts, this as a third set of materials.

While the CG Overlay applies to two thirds of the overall project's depth north of M Street, the entire site benefits from C-3-C base zoning as well as being within the Capitol South receiving zone.

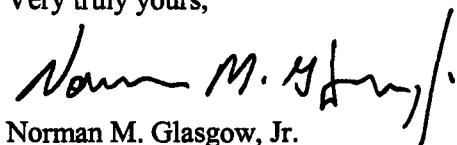
The resulting project is a building with eleven floors of offices and a ground floor largely devoted to "preferred uses," consistent with the specific requirements of the CG overlay.

Section 1604 requires overall review by the Commission and approval against specific criteria. Applicant believes they satisfy all relevant requirements.

The Applicant requests, in conjunction with the § 1604 review, approval of certain non-conforming courts and variance or waiver of a portion of the rear yard requirements. The Commission is authorized to hear and approve such requests under § 1604.9. The pre-hearing statement provides relevant details and justifications.

You will also find in the enclose materials a letter recommending approval from Advisory Neighborhood Commission 6D with whom Applicant consulted as part of its overall efforts.

Very truly yours,



Norman M. Glasgow, Jr.  
HOLLAND & KNIGHT, LLP

ZONING COMMISSION  
District of Columbia

CASE NO. 06-03

EXHIBIT NO. 14  
ZONING COMMISSION  
District of Columbia  
CASE NO. 06-03  
EXHIBIT NO. 14

Zoning Commission of the District of Columbia  
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cc: Office of Planning  
Advisory Neighborhood Commission 6D

Enclosures – As Stated

# 3777655\_v1

BEFORE THE  
ZONING COMMISSION  
OF THE  
DISTRICT OF COLUMBIA

**APPLICATION OF:**  
**100 M STREET S.E., L.L.C. (OPUS EAST, L.L.C.)**

**ZC APPLICATION 06-03**  
**HEARING: MAY 25, 2006**

**STATEMENT OF THE APPLICANT**

**I – BACKGROUND**

This statement is submitted on behalf of 100 M Street, S.E., L.L.C., (the “Applicant”), the owner of property located within Square 743-N, specifically record lots 58, 59, 60, 61, 63, 64, 65 and; assessment and taxation lots 801, 802, 803, 804, 805, and 813; a portion of assessment and taxation lot 822; and the portions of a public alley approved for closing by the D. C. Council with legislation now signed by the Mayor. An emergency alley closing was also approved and is currently effective.

The site is located in the southwest portion of Square 743-N. M Street lies to the south and First Street, S.E. lies to the west. The site is a “corner lot” under the Zoning Regulations. Overall, the site has nearly 145 feet of frontage along First Street, S.E. and over 186’ along M Street, S.E. The total area is 26,399 square feet.

The entire site is zoned C-3-C. The entire site is also entirely within the Capitol South “receiving zone”. The site’s overall development plan is to develop to a Floor Area Ratio (“FAR”) of 10.0, as thereby allowed, with maximum height limited only by the Height Act of 1910, here 130 feet. (See §§ 1709.18 and 1709.21.)

While the entire site is zoned C-3-C and is within the Capitol South receiving zone, the southern 100 feet of the site falls within the Capitol Gateway (“CG”) overlay district, this being the point at which that overlay zone’s boundary was set by the Zoning Commission in its decision on

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April 20, 2006 to publish a “correction Order” to the earlier case. The correction order is expected to set the zone boundary line at the “southern edge” of the public alley that is being closed.

Within this overall area (the “Site”), the Applicant proposes to develop a twelve story building whose ground floor would be reserved for preferred retail, service and other uses and whose upper floors would be general offices. Portions of the ground floor within the CG overlay must meet requirements set out in § 1604 of the zoning regulations. In addition, the overall project within the CG overlay is subject to “review and approval” by the Zoning Commission under the same section. That same section further provides that, when needed, the Zoning Commission may be requested to grant relief from other provisions of the zoning regulations that would, absent this authority, be considered by the Board of Zoning Adjustment as variances or special exceptions.

This application requests the overall “review and approval” of the Zoning Commission for the project under § 1604. It further requests approval of from the requirements for minimum depth of rear yard pursuant to § 774 and from the minimum width and area of several courts under § 776.

This case will be the first heard by the Zoning Commission under its “review and approval” authority within the CG/C-3-C/Capitol South receiving zone area. Applicant is filing materials and evidence to address the criteria set forth in Section 1604. For the other relief, the materials and evidence are submitted in the manner that approvals are sought from the same Board.

## **II – JURISDICTION OF THE ZONING COMMISSION**

The Zoning Commission has jurisdiction to grant the overall approval as well as the variance relief herein requested pursuant to §§ 1604, 774, 3103 and 3104 of the Zoning Regulations of the District of Columbia (the “Zoning Regulations”). 11 DCMR §§ 1604, 3103 and 3104.

## **III – DESCRIPTION OF THE AREA AND PROJECT**

### **A. Description of the Site and Surrounding Area**

The site is located at 100 M Street, S.E., which is at that Street’s intersection with First Street, SE. The site is a corner lot with a frontage of over 186 feet along M Street and a frontage of nearly 145 feet along First Street. (See: the official Surveyor’s Plat (within the plans at Exhibit C)).

All of the area’s property limits other than that along its eastern side's follow straight lines, the northwest and southwest corners are nearly, but not exactly perpendicular to each other. The eastern property limit tracks a public alley that parallels the angle of New Jersey Avenue at the eastern side of the Square and then an adjacent private property (lot 800) that separates the site from that alley. Overall, the project’s land contains a total of 26,399.6 square feet.

The site itself is located within the overall area undergoing significant change arising from the establishment of the Southeast Federal Center and the new baseball stadium for the District of Columbia and its “home team,” the “Washington Nationals.”

The site includes the current northern limit of the Capitol Gateway overlay district, Overall, in the same case creating and mapping the Capitol Gateway overlay, virtually all private and District land south of M Street on both sides of South Capitol Street was rezoned from various industrial zones to mixed use “CR” and mid-density “W-2” zones, along with the accompanying overlay. North of M Street, the areas already zoned C-3-C were not affected by changes in either base zoning or their status within the Capitol South Receiving zone. However, the southern portion (about half the overall north-south

distance from M to L Streets, S.E., was also put under the CG overlay. In Square 743-N, the depth varies from 100 feet within the subject site and increases to the east along the Square's New Jersey Avenue frontage.

The Capitol Gateway (commonly abbreviated "CG") overlay district's purposes are set out at § 1600.2 as follows:

- (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; and*
- (e) *Require suitable ground-level retail and service uses and adequate sidewalk width along M Street, S.E., near the Navy Yard Metrorail station.*

For developments along the northern side of M Street S.E. within the CG overlay, the regulations provide additional objectives (beyond the set back noted in paragraph (e) above) and a means of review by the Zoning Commission (§ 1604.1) to ensure these are provided. These are found in § 1604.2, as follows:

*1604.2 An applicant requesting approval under this section must prove that the proposed building's architectural design, site plan, landscaping, and sidewalk treatment are of a superior quality, pursuant to the design and use requirements [of the further subsections of § 1604]*

**B. Project Description**

The Applicant seeks to build a new mixed use building.

- This proposed building would provide eleven stories of general offices.
- The ground floor is being developed for retail or service uses and the office entrance. The ground floor would also provide needed access to parking on lower levels, loading, and for fire control purposes. Nearly three fourths of the building's ground floor area would be used for retail, service and arts-related uses, over twice as high a percentage as the present CG regulations require (see § 1604.4).

**Aspects for Which Zoning Review and Approval and Zoning Relief is Needed:**

First and foremost, the building must be reviewed and approved by the Zoning Commission pursuant to the requirements of § 1604. That section provides specific elements, each of which must be considered; Applicant's case will focus on showing how the project satisfies each specific standard of § 1604.

In addition, and partly arising from compliance with the design principles of § 1604, Applicant seeks approval to reduce the depth of the rear yard and to have certain courtyards whose width and area is less than the minimums prescribed in the pertinent regulations.

To the Applicant's best understanding, there are no other issues requiring approval by the Zoning Commission as all other standards are being met. (See Exhibit C).

**IV – THE APPLICANT MEETS THE BURDEN OF PROOF FOR REVIEW AND APPROVAL UNDER  
SECTION 1604**

**A. Provisions for Approving Projects Under §§ 1604 and Supporting Evidence**

Under § 1604, the Zoning Commission is to consider projects with M Street frontage such as this against standards set forth in §§ 1604.2 through 1604.10.

| 1604 ZONING COMMISSION REVIEW OF BUILDINGS AND STRUCTURES ON M STREET, S.E.                                                                                                                                                                                                           | SUPPORTING EVIDENCE                                                                                                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1604.1 Any proposed building on a lot that abuts M Street, S.E., between South Capitol Street and 4th Street, S.E., shall be subject to review and approval by the Zoning Commission.                                                                                                 | <ul style="list-style-type: none"><li>• Application under review as required</li></ul>                                                                                                                               |
| 1604.2 An applicant requesting approval under this section must prove that the proposed building's architectural design, site plan, landscaping, and sidewalk treatment are of a superior quality, pursuant to the design and use requirements set forth in §§ 1604.3 through 1604.7. | <ul style="list-style-type: none"><li>• Architects testimony will describe each required element in detail</li></ul>                                                                                                 |
| 1604.3 The streetwall of each new building shall be set back for its entire height and frontage along M Street not less than fifteen (15) feet measured from the face of the adjacent curb along M Street, S.E.                                                                       | <ul style="list-style-type: none"><li>• Streetwall is set back the distance required (see Site plan)</li><li>• This setback also is in full accord with specific M Street purpose provision of § 1604.2(e)</li></ul> |

| 1604 ZONING COMMISSION REVIEW OF BUILDINGS AND STRUCTURES ON M STREET, S.E.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | SUPPORTING EVIDENCE                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1604.4 Each new building shall devote not less than thirty-five percent (35%) of the gross floor area of the ground floor to retail, service, entertainment, or arts uses ("preferred uses") as permitted in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of this Title; provided, that the following uses shall not be permitted: automobile, laundry, drive-through accessory to any use, gasoline service stations, and office uses (other than those accessory to the administration, maintenance, or leasing of the building). Such preferred uses shall occupy 100% of the building's street frontage along M Street, except for space devoted to building entrances or required to be devoted to fire control.</p> | <ul style="list-style-type: none"> <li>• The ground floor area provides for almost 75 % of its area to be set aside for retail, service or other approved uses.</li> <li>• No use that is prohibited by this section will be established</li> <li>• The uses that are being so provided will occupy the entire street wall along M Street (with the exceptions allowed)</li> <li>• The uses that are preferred will also occupy all of the streetwall of First Street, S.E.</li> </ul> |
| <p>1604.5 For good cause shown, the Commission may authorize interim occupancy of the preferred use space required by § 1604.4 by non-preferred uses for up to a five (5) year period; provided, that the ground floor space is suitably designed for future occupancy by the preferred uses.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                 | <ul style="list-style-type: none"> <li>• [Not applicable]</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1604.6 Not less than fifty percent (50%) of the surface area of the streetwall of any new building along M Street shall be devoted to display windows having clear or low emissivity glass except for decorative accent, and to entrances to commercial uses or the building.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>• The project plans provide coverage that is over 90 percent along M Street and over 80 percent along First Street (none required along First Street)</li> </ul>                                                                                                                                                                                                                                                                                |

| 1604 ZONING COMMISSION REVIEW OF BUILDINGS AND STRUCTURES ON M STREET, S.E.                                                                                                                                                                                                                                                                                                                                                                                                              | SUPPORTING EVIDENCE                                                                                                                                                                                               |
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| 1604.7 No driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building.                                                                                                                                                                                                                                                                                                                                               | <ul style="list-style-type: none"> <li>• The access driveway to required parking is from First Street, as allowed.</li> <li>• The access to required loading berths is along an existing public alley.</li> </ul> |
| 1604.8 A building that qualifies as a Capitol South Receiving Zone site under § 1709.18 and for which a building permit has been applied for prior to August 31, 2001, shall not be subject to the requirements of this section.                                                                                                                                                                                                                                                         | <ul style="list-style-type: none"> <li>• [Not applicable]</li> </ul>                                                                                                                                              |
| 1604.9 The Commission may hear and decide any additional requests for special exception or variance relief needed for the subject property. Such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval.                                                                                                                                                                                                               | <ul style="list-style-type: none"> <li>• Case requests relief from minimum depth of rear yard and certain court requirements, both discussed below.</li> </ul>                                                    |
| 1604.10 At the time of filing an application with the Commission, the applicant shall pay the filing fee specified in § 3180.1(b)(16), plus such fees as apply to any additional zoning relief requested. The provisions of § 3181 relating to the administration of fees shall apply, except that the applicant may appeal any decision of the Director regarding the fee schedule to the Commission, which shall decide the appeal as a preliminary matter to hearing the application. | <ul style="list-style-type: none"> <li>• Fees computed and paid at time of filing and subsequent amendment</li> </ul>                                                                                             |

**B. Standards for Approving Projects Under § 1604**

Relief granted in a process whose specific criteria is stated is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. For example, in reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board (and here the Zoning Commission) must ordinarily grant the application. *Id.*

**C. Variances for Courts Under §§ 776 and 3103; Standards and Supporting Evidence**

In order to provide articulation of the overall building, the Applicant's plans provide nine courts and court niches that provide articulation in what would otherwise be flat facades. These courts, and court niches, are noted on Plan CG-4. Seven of these, numbered 1-7, are shown on the portion related to "First Floor Covered with Roof Overhang." The two others are depicted on the adjacent plan, "11<sup>th</sup> and 12<sup>th</sup> Floor Above Typ. Floor Plan."

**Courtyard #1**

Of these, at least one, Court #1, requires a variance. This is a small decorative notch added to the eastern face of the building. That notch would be permitted "court niche" but for the fact that the "court" opens onto the adjacent out parcel lot, Lot 800. Accordingly, as a technical matter, it is a "closed court."

Closed courts must have both a minimum width and a minimum area. The minimum width is a function of the height of the adjacent facing wall, here rising from the ground to the parapet. That overall height is over 129 feet, which leads to a normal minimum width of 32' 3½" and a minimum area of 4,171.00 square feet. The plan calls for a notch that is just under two feet wide and one and a half feet deep, an area of just under three square feet.

This architectural element is purely decorative, consistent with the current and emerging purposes of the Capitol Gateway overlay. It has no windows, let alone windows providing required light or air that open into it. No ducts lead to or from it, either. However, since it “opens” to an adjacent lot and not to another yard on the site, or public street or public alley, it is a very small “closed court.”

### **Standards for Area Variances**

Under D. C. Code § 6-641.07(g)(3) and 11 DCMR §3103.2, the Board (and here the Zoning Commission) is authorized to grant an area variance where it finds that three conditions exist:

- the property is unusual because of its size, shape or topography or other extraordinary or exceptional situation or condition;
- the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

*See French v. District of Columbia Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

The D.C. Court of Appeals has determined that, to satisfy the practical difficulty element of the area variance test, an applicant must demonstrate that “compliance with the area restriction would be unnecessarily burdensome” and that the practical difficulty is “unique to the particular property”. *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d at 1170 (D.C. 1990). In that case, the Court noted that “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”;

“the effect the proposed variance(s) would have on the overall zone plan,” and the “increased expense and inconvenience to applicants for a variance are among the proper factors for BZA’s consideration.” *Id.* at 1171. The same decision further advised, “The statute does not preclude the approval of a variance where the uniqueness arises from a confluence of factors”, a particularly meaningful standard in this and other aspects of the instant Application for approval and relief.

These and other legal standards are clearly summarized in the Order issued by the Board of Zoning Adjustment January 23, 2006 in Application No. 17313 of Edward Ertel and Jennifer Squires, within that Order’s “Conclusions of Law” (See Exhibit E).

### Court Yard #1

As discussed below, all three “prongs” of the area variance test are met in this Application.

| 3103.1 With respect to variances, the [Zoning Commission] has the power under § 8 of the Zoning Act, D.C. Code, 2001 Ed., § 6-64107(g)(3) ... where --                                                                                                                                            | EVIDENCE Relating to Variance for Closed Court (Court #1)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ... by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of original adoption of the regulations or by reason of exception topographic conditions or extraordinary or exceptional situation or condition of a specific piece of property ... -- | <ul style="list-style-type: none"><li>• Lot’s eastern edge is both against other land (lot 800) as well as a segment of public alley. This out lot is of such size and shape that it is unlikely to be built upon or, if improved, it would only be with a structure or building of low scale.</li><li>• The Applicant’s lot bends at the point of the courtyard, a unique factor.</li><li>• Metro portal is across that alley.</li><li>• Capitol Gateway overlay promotes overall sound design</li><li>• Such design requirements of § 1604 require an articulated design of a superior quality.</li></ul> |

| 3103.1 With respect to variances, the [Zoning Commission] has the power under § 8 of the Zoning Act, D.C. Code, 2001 Ed., § 6-64107(g)(3) ... where --                                                                                                                                                                                                                                      | EVIDENCE Relating to Variance for Closed Court (Court #1)                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ... the strict application of any regulation adopted under D. C. Code, 2001 Ed., §§ 6-641-01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from the strict application so as to relieve such difficulty or hardship; | <ul style="list-style-type: none"><li>• Meeting minimum width and particularly minimum area requirements would result in loss of nearly sixteen percent (16 %) of each floor's total area, over and above areas lost to other required setbacks and yard areas (5 %).</li><li>• Such loss of floor area could only be made up with added floors.</li><li>• The height limits do not allow added floors.</li></ul> |
| provided, such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the Zone Plan as embodied in the Zoning Regulations and Map.                                                                                                                                                                | <ul style="list-style-type: none"><li>• Proposed "notch" is decorative and has no external effect on area or adjacent land owner.</li><li>• Is fully consistent with purposes of "court niche" even if it fails its test to open onto a street, yard, alley, or court.</li></ul>                                                                                                                                  |

**Courtyard #3**

Applicant further advises that Court #3 may require a variance. This courtyard is located in the extreme southwestern corner of the proposed building. The uncertainty lies in the fact that the small open court exists as and is, from a definitional point of view, also a “court niche.” If deemed a court niche, then no relief is needed. If the court yard is deemed an open court, then its overall width is less than that required under the regulations.

If an open court, the basis for relief is set out as follows:

| 3103.1 With respect to variances, the [Zoning Commission] has the power under § 8 of the Zoning Act, D.C. Code, 2001 Ed., § 6-64107(g)(3) ... where --                                                                                                                                                                                                                                      | EVIDENCE Relating to Variance for Closed Court (Court #3)                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ... by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of original adoption of the regulations or by reason of exception topographic conditions or extraordinary or exceptional situation or condition of a specific piece of property ... --                                                                                           | <ul style="list-style-type: none"> <li>• Prominent corner location along major view axis, M Street, S.E.</li> <li>• CG Overlay requires quality designs and Applicant submits that this articulation of design at this location is appropriate and beneficial.</li> </ul>                                                                                        |
| ... the strict application of any regulation adopted under D. C. Code, 2001 Ed., §§ 6-641-01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from the strict application so as to relieve such difficulty or hardship; | <ul style="list-style-type: none"> <li>• Meeting minimum width and particularly minimum area requirements would result in loss of valuable floor area over and above areas lost to other required setbacks (3 %).</li> <li>• Such loss of floor area could only be made up with added floors.</li> <li>• The height limits do not allow added floors.</li> </ul> |
| provided, such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the Zone Plan as embodied in the Zoning Regulations and Map.                                                                                                                                                                | <ul style="list-style-type: none"> <li>• Proposed “notch” is decorative and has no external effect on area or adjacent properties or others in surrounding area.</li> </ul>                                                                                                                                                                                      |

### **Courtyard #7**

Applicant further concludes that Court #7 requires a variance. This is an open court that occupies the northwestern portion of the site over the portion of the roof over the garage entrance ramp that is not in the project's rear yard (subject of other relief, discussed below).

Courtyard #7 consists of the area south of the limits of the rear yard and north of the northern face of the building's floors above the ground floor. See Plan CG-4. (Courtyard #5, which complies with all dimensional requirements, sits below the western limits of Courtyard #7 and the rear yard.)

As in the case of Courtyard #1, Courtyard #7 is one that has a minimum required width. (However, as it (and all other courtyards and court niches) open to a street, yard, alley, or court, they have no required minimum areas.)

Strict application of the regulations would result in a courtyard of some 29' 7½", of which 7 feet is provided within the courtyard and 12 more feet of abutting space in the rear yard is also provided. However, strict interpretation of the regulations does not allow credit for the latter in determining minimum width of the court *per se*.

Applicant further notes that the overall open area south of the face on wall, south-facing portion of the project to the north, an all-residential building, includes windows providing required light and air to apartments. To ensure that these windows will receive light and air permanently, Applicant in this case is granting a permanent "no build" to the adjacent owner for areas over the level of the enclosed garage entrance ramp. The total depth of that area is sufficient to meet the open air requirements for the apartment building's south-facing windows.

| <p>3103.1 With respect to variances, the [Zoning Commission] has the power under § 8 of the Zoning Act, D.C. Code, 2001 Ed., § 6-64107(g)(3) ... where --</p>                                                                                                                                                                                                                                      | <p>EVIDENCE Relating to Variance for Closed Court (Court #7)</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>... by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of original adoption of the regulations or by reason of exception topographic conditions or extraordinary or exceptional situation or condition of a specific piece of property ... --</p>                                                                                           | <ul style="list-style-type: none"> <li>• Lot's location is part of larger area allowing and encouraging high density development</li> <li>• Even a corner lot must provide some form of rear yard (or courtyard in the alternative).</li> <li>• Northern edge and northwest west corner of site is only area feasible for such.</li> <li>• Density allowed resulted in cost of land for allowed gross square feet, no offset for new CG requirements.</li> <li>• Height limit reached already, so relief not possible by "going up."</li> <li>• Adjoining owners have in effect structured a joint development agreement providing for adequate set backs and separation between the office and residential buildings through a private agreement.</li> </ul> |
| <p>... the strict application of any regulation adopted under D. C. Code, 2001 Ed., §§ 6-641-01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from the strict application so as to relieve such difficulty or hardship;</p> | <ul style="list-style-type: none"> <li>• Meeting minimum width and particularly minimum area requirements would result in loss of valuable floor area over and above areas lost to other setbacks (3 %).</li> <li>• Such loss of floor area could only be made up with added floors.</li> <li>• The height limits do not allow added floors.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>provided, such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the Zone Plan as embodied in the Zoning Regulations and Map.</p>                                                                                                                                                                | <ul style="list-style-type: none"> <li>• Proposed "notch" is decorative and has no external effect on area or adjacent land owner</li> <li>• Applicant providing "no build" guarantee to adjacent owner assuring perpetual light and air to apartment windows facing south.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

**V. Relief for Rear Yard Under §§ 774 and 3103 or, in the Alternative, § 3104;**  
**Standards and Supporting Evidence**

Each zone district provides specifications for “rear yards.” Typically, the requirement is for some degree of open area at the end of the lot opposite from its front. In higher density zones, of which C-3-C is one, the regulations also commonly provide, as here, that the first twenty feet of lot area may be occupied, allowing, for example, retail uses to utilize a full floor.

The required depth of a rear yard in the C-3-C zone is determined by the overall height at the middle of the rear of the building to the highest point of the rear wall and parapet. Here, this height is 129.17 feet; this results in a minimum depth of rear yard of 26’ 11.” Applicant provides 12’ 1” at its narrowest point, the northernmost face of the building’s upper floors “over” the roof of the loading dock.

The overall width of the open area deepens to 20’ 1” for the western portion of the Applicant’s site, south of the portion of the adjacent property’s planned apartment building’s southernmost wall. Apartments at that end of that building will have south-facing windows. Applicant and that owner have agreed to maintain a clear area for light and air for the full width of the apartment portion of that building’s southern face; thus, the planned separation of the two buildings’ facing walls meets the adjacent owner’s need for a “no build”).

The zoning regulations also provide, for corner buildings, a right to develop without a full rear yard if a court of suitable width is established. Here, such a court would have to be almost 30 feet wide, ten feet more than the separation planned. Moreover, to satisfy the adjacent owner's need for light and air for the full depth of that wall plus 20 more feet to the east, the overall court would have to measure 30 x 100, or 3,000 square feet. This would deprive the Applicant of gross square footage that is otherwise allowed on the site and such a loss would be economically unacceptable. Accordingly, Applicant seeks relief either by variance (as filed) or, in the alternative, under the waiver authority of § 774.2.<sup>1</sup>

For reasons set out above, the ability to provide a court in lieu of rear yard does not, in this case, afford ample relief in light of a confluence of factors that are further described below and in an accompanying report.

Finally, the regulations provide special exception authority that allows the Board of Zoning Adjustment to waive the rear yard requirements for any building in a C-3-C zone if certain specific conditions are met (§§ 774.3 through 774.6) along with those standards applicable to all special exception processes (§ 3104.1).

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<sup>1</sup> See BZA Order 17005 issued April 25, 2003 in which the Board heard and decided a case in which the application was filed as a variance but heard and approved as a special exception.

**Relief as a Rear Yard Variance**

See accompanying report and consider against the relevant criteria set forth below:

| 3103.1 With respect to variances, the [Zoning Commission] has the power under § 8 of the Zoning Act, D.C. Code, 2001 Ed., § 6-64107(g)(3) ... where --                                                                                                                                                                                                                                      | EVIDENCE Relating to Variance for Rear Yard with a Depth Less than that Ordinarily Required                                                                                                                                                                                                                                                                      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ... by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of original adoption of the regulations or by reason of exception topographic conditions or extraordinary or exceptional situation or condition of a specific piece of property ... --                                                                                           | <ul style="list-style-type: none"> <li>• Prominent corner location along major view axis, First and M Street, S.E.</li> <li>• CG Overlay requires quality designs</li> <li>• Cumulative effect of regulations of base zone, South Capitol Receiving Zone, and CG overlay as now in effect result in exceptional situation</li> </ul>                             |
| ... the strict application of any regulation adopted under D. C. Code, 2001 Ed., §§ 6-641-01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from the strict application so as to relieve such difficulty or hardship; | <ul style="list-style-type: none"> <li>• Meeting minimum width and particularly minimum area requirements would result in loss of valuable floor area over and above areas lost to other required setbacks (3 %).</li> <li>• Such loss of floor area could only be made up with added floors.</li> <li>• The height limits do not allow added floors.</li> </ul> |
| provided, such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the Zone Plan as embodied in the Zoning Regulations and Map.                                                                                                                                                                | <ul style="list-style-type: none"> <li>• Supported by adjacent owner (to north)</li> <li>• Consistency with Comprehensive Plan (high-density commercial)</li> <li>• Satisfies all requirements of CG overlay regulations in effect May 25, 2006</li> </ul>                                                                                                       |

**Rear Yard Relief as a Special Exception**

| 774   | REAR YARDS (C)                                                                                                                                                                                                                                                                      | SUPPORTING EVIDENCE                                                                                                                                                             |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 774.1 | Except as provided in this section, a rear yard shall be provided for each structure located in a Commercial District, the minimum depth of which shall be as prescribed <i>[by formula, here resulting in a required depth of nearly 27 feet (26' 11")]</i> .                      | [General provision, provided for context]                                                                                                                                       |
| 774.2 | The Board of Zoning Adjustment may waive the rear yard requirements of this section pertaining to C-3-A, C-3-B, C-3-C, and C-4 Districts in accordance with the requirements of § 3104 for special exceptions; provided, that the standards in §§ 774.3 through 774.6 shall be met. | [General authority for waiver of rear yard as special exception and citing specific standards to be met.]                                                                       |
| 774.3 | Apartment and office windows shall be separated from other buildings that contain facing windows a distance sufficient to provide light and air and to protect the privacy of building occupants.                                                                                   | <ul style="list-style-type: none"> <li>• Separation by twenty feet meets all such requirements</li> </ul>                                                                       |
| 774.4 | In determining distances between windows in buildings facing each other, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be sufficient to provide adequate light and privacy to the rooms.                                       | <ul style="list-style-type: none"> <li>• Angles and sight lines are satisfactory to adjacent owners (see letter of support)</li> </ul>                                          |
| 774.5 | The building plan shall include provisions for adequate off-street service functions, including parking and loading areas and access points                                                                                                                                         | <ul style="list-style-type: none"> <li>• Applicant's site meets all requirements of Chapters 21 and 22 of the Zoning Regulations; no waivers, no special exceptions.</li> </ul> |

| 774   | REAR YARDS (C)                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | SUPPORTING EVIDENCE                                                                                                                                                                                                                                                               |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 774.6 | Upon receiving an application for an approval under § 774.2, the Board shall submit the application to the D.C. Office of Planning for coordination review, report, and impact assessment, along with reviews in writing of all relevant District of Columbia departments and agencies including the Departments of Transportation and Housing and Community Development and, if a historic district or historic landmark is involved, the State Historic Preservation Officer. | <ul style="list-style-type: none"><li>• Office of Planning has advised both Departments of application; neither had provided any reaction to OP as of May 8, 2006.</li><li>• Site is not located within an historic district and is not a designated historic landmark.</li></ul> |

|                                                                                                                                                                                                                                                              |                                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>3104.1 The [Zoning Commission] is authorized to grant special exceptions, as provided in this title, where, in the judgment of [the Commission] the special exceptions will be --</p>                                                                     | <ul style="list-style-type: none"><li>•</li></ul>                                                                                                       |
| <p>... in general harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and ... --</p>                                                                                                                                      | <ul style="list-style-type: none"><li>• Earning approval under § 1604 inherently assures that the overall design is in harmony as required.</li></ul>   |
| <p>... will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map subject in each case to the specific conditions specified in this title <i>[here, meaning §§ 774.3 through 774.6]</i></p> | <ul style="list-style-type: none"><li>• Likewise, the approval would not be granted if there were adverse effects on any neighboring property</li></ul> |

**VI. Applicant Requests for Flexibility as Final Plans Emerge**

Applicant's plans contain focused requests for "flexibility" in certain areas. Where flexibility is sought, it is expressed on the pages of the plans affected by the request. For example, as final engineering of the mechanical penthouse (roof structure) is completed, it may be possible to reduce its depth or breadth.

**VII. Exhibits Submitted in Support of the Application**

Exhibit A: Architectural Plans and Drawings, Topographic Survey; Surveyor's Plat (separate document)

Exhibit B: Constructed Zoning Map (reflecting map decisions in Capitol Gateway cases) showing the Site highlighted in red and Extract from Generalized Land Use Map from the Comprehensive Plan (1999)

Exhibit C: 100 M Street, S.E. Zoning Analysis – providing details of applicable zoning regulations, showing project compliance and areas where compliance is not attained and for which relief is sought.

Exhibit D: “Confluence of Factors” Analysis of 100 M Street, S.E. (Schematic Diagram)

Exhibit E: BZA Orders:

- 17005 (Studio Theatre) showing case of rear yard variance converted to special exception by the Board at the hearing and so decided.
- 17313 (Edwin Ertel and Jennifer Squires) summarizing, in its “Conclusions of Law” the various legal principles involved, with references to, inter alia, Gilmartin

Exhibit F: Advisory Neighborhood Commission 6D Letter of Support Concerning Project;

Exhibit G: Outline of Testimony of Steven C. Cohen, Developer;

Exhibit H: Outline of Testimony of WDG Design Architect Eric J. Leibmann,\* AIA

Exhibit I: Outline of Testimony by Trini C. Rodriguez, ASLA, AICP, AIA,\* Parker Rodriguez, Landscape Architects

Exhibit J: Outline of Testimony of Lindsley Williams,\* Land Use, Planning and Zoning Consultant

\* Proposed experts in the fields of architecture and urban design; landscape architecture; and land use, planning, and zoning respectively. (Resumes submitted as separate documents to the Zoning Commission.)

**VIII. WITNESSES**

- A. Steven C. Cohen, Principal, Opus East Limited Partnership
- B. Eric J. Leibmann, AIA, WDG Architects.
- C. Trini Rodriguez, ASLA, RLA, AICP, AIA, Parker Rodriguez Landscape Architects
- D. Lindsley Williams, Land Use, Planning and Zoning Consultant.

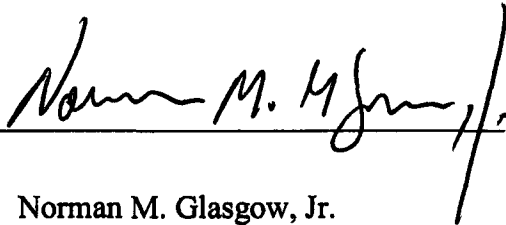
**IX. CONCLUSION**

For the reasons stated above, Applicant believes its plans warrant approval under § 1604 and the relief requested to achieve the superior design the approval acknowledges is likewise earned and should be approved.

Accordingly, the Applicant respectfully requests that the Commission grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By:   
Norman M. Glasgow, Jr.

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