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March 26, 2007

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Via Hand Delivery

Anthony Hood, Chairperson
DC Zoning Commission
441 4th Street, NW
Suite 210
Washington, DC 20001

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**Re: Zoning Commission Case No. 06-41 (Square 653, Lot 111);
Supplemental Post-Hearing Submission**

Dear Commissioner Hood and Members of the Commission:

Pursuant to discussions with the Office of Planning and the Office of the Attorney General, the Applicant would like to submit this supplemental post-hearing statement to clarify issues raised by those agencies. Specifically, it has been suggested that the Applicant also seek relief from the floor area ratio ("FAR") regulations to permit the project to utilize the bonus density afforded under the Inclusionary Zoning ("IZ") regulations since the IZ regulations are not yet effective. Accordingly, the Applicant seeks a variance from the FAR regulations (Section 771.2) to make the record clear that the Commission can grant the additional density that the Applicant is requesting. The Applicant would also like to further bolster its argument for providing 50% of the bonus density captured by providing evidence that it cannot satisfy the remainder of the inclusionary zoning requirement by constructing affordable units off-site. Finally, the Applicant would like to clarify that it is requesting relief from the requirements of the pending Capital Gateway regulations that require a 15 foot setback and that 60% of the streetwall façade be constructed to the setback line. The notice for this case clearly states that the proposed FAR is 6.6, that the application will be reviewed pursuant to the Capital Gateway Overlay regulations, thus the community has received notice of the necessary relief.

FAR Variance

The test for granting variance relief pursuant to Section 3103 of the Zoning Regulations is well settled: (1) the property must be subject to an extraordinary overlay regulation; (2) the property must be subject to an extraordinary zoning regulation; and (3) the property must be subject to an extraordinary zoning regulation.

ZONING COMMISSION
District of Columbia

CASE NO. 06-41
ZONING COMMISSION
District of Columbia
EXHIBIT NO. 38
CASE NO. 06-41
EXHIBIT NO. 38

March 26, 2007

Page 2

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.

The Applicant has indicated with regard to its other variance requests that the property is subject to an exceptional situation and conditions. The lot's greatest length is along South Capitol Street, thus, the 15 foot setback cuts significantly into the available development envelope for the site. When combined with the 15 foot rear yard setback, the building is forced into the center of the Property, creating a long and narrow building.

In addition to the physical constrictions of the site, the envelope is further restricted because of its context. It is located immediately adjacent to lower-density rowhouses and across South Capitol Street from the Nationals' new baseball stadium. In order to balance the competing demands of the neighboring land uses, the Applicant must step the height of the building down as it reaches the rowhouses to diminish its immediate presence for those buildings. Thus, the Applicant is forced to maximize the limited footprint that is available at the site. In order to satisfy the competing demands on the site, the Applicant requests relief from the FAR regulations to allow it to manipulate the building to allow for the step down near the rowhouses as well as the step up to a greater height along South Capitol Street. Moreover, the only way to make the provision of affordable housing remotely possible would be with the additional density the Applicant requests.

The variance relief from the height regulations and FAR regulations, as well as the provision of affordable housing are all linked. If the Applicant is not afforded the flexibility to increase the height of the proposed building, and likewise the FAR of the building, it will be especially difficult to step the building down in the rear to accommodate the rowhouses and it will not be possible to provide affordable housing units without suffering a significant economic loss on the project. The Applicant submitted evidence with its previous submission that it takes nine market rate units to offset the cost of one affordable unit. The bonus density helps to offset some of this cost; without it, the Applicant would bear a great burden in providing the affordable housing.

Finally, no harm to the public or the zone plan will result from granting this variance. The ANC stated in its letter of support that the "project meets the criteria of height, massing, and setback from South Capitol Street imposed by the Zoning Overlay, and provides a suitable step-down and courtyard space on the rear side of the building to

March 26, 2007

Page 3

mitigate the height of the building on South Capitol Street.” Moreover, the proposed increase in height and density along South Capitol is in keeping with the Comprehensive Plan as well as the Capital Gateway Overlay, both of which call for the development of South Capitol Street as a “great urban boulevard and ‘walking’ street, befitting its role as a gateway to the U.S. Capitol...”

Providing IZ Off-Site

The Applicant has submitted strong evidence demonstrating the difficulty in providing more affordable units on-site. It has been suggested that the pending IZ regulations require evidence that the Applicant cannot satisfy the IZ requirement off-site before relief can be granted. Though the Applicant disagrees with that interpretation of the pending regulations, it nevertheless would like to assure the Commission that it is not possible for it to satisfy the IZ requirement off-site.

Section 2607.1 requires evidence from the Applicant that providing units on-site is economically infeasible. The Applicant has submitted a specific economic analysis demonstrating that it takes nine market-rate units to offset the cost of providing one affordable unit, making it impossible to provide 8% of the matter-of-right density as affordable housing on-site. The Applicant has only two other residential projects in the District and certificates of occupancy have already been issued for both and both are fully stabilized. The Applicant is not contemplating any other residential projects in the near future that would be located within the same census tract as the Subject Property. Accordingly, the Applicant cannot provide the remainder of the affordable housing units in connection with another residential project.

Relief from Capital Gateway Requirements

The Applicant submitted its application for design review pursuant to the pending Capital Gateway Overlay requirements. The Applicant took the position that relief was not specifically required from the Overlay regulations. It believes the pending regulations can be interpreted in a manner in which the project would be found compliant. Specifically, the Commission could establish an interpretation of the 15 foot setback requirement to allow for balconies and the 60% façade calculation could include balconies that project beyond the setback line. Nevertheless, should the Commission choose not to set such a precedent, the Applicant seeks relief from those requirements.

March 26, 2007

Page 4

The Property is subject to an exceptional situation in that its greatest frontage is along South Capitol Street and to require balconies to be setback from the 15 foot setback line would diminish even more square footage from the project and would make achieving the 60% façade requirement impossible. The Property's use for a residential building and its position along South Capitol Street, across from the baseball stadium nearly mandate the need for balconies. The balconies provide a private retreat for the residents while activating the streetscape along South Capitol Street. Moreover, they provide definition to the building. Allowing the balconies will not be detrimental to the zone plan or the public. The balconies will animate South Capitol Street and enhance the livelihood of the area around the baseball stadium.

Similarly, given the length of the building's frontage along South Capitol Street, it is not surprising that in order to articulate the building's façade, large portions will be set back from the 15 foot setback line. 59.43% of the building is constructed to the setback line and when including the balconies that project into the setback, the Applicant clearly satisfies the 60% façade requirement. The *de minimis* nature of the relief required is such that a practical difficulty will result if the Applicant is required to redesign its building to account for another .57% of the façade reaching the 15 foot setback. Given the *de minimis* nature of the relief, it will not be evident to the public that the building is .57% short of meeting the Overlay requirements. The effect of the building's presence is the same as if 60% of the building were constructed to the setback line. Thus, neither the zone plan nor the general public will be harmed by approving the requested relief.

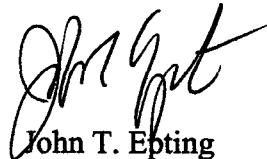
Finally, the Applicant would like assurance that because it has gone through this process that the Zoning Commission Order will vest the project, as approved by the Commission, regardless of when the IZ regulations become effective. The Zoning Regulations provide in Section 3202.6 that "[a]ll applications for building permits authorized by orders of the Board of Zoning Adjustment may be processed in accordance with the Zoning Regulations in effect on the date those orders are promulgated..." There is not a similar provision that applies to Zoning Commission Orders. In light of the Applicant's presence before the Zoning Commission for relief from the pending IZ regulations, it would like to avoid the need to return to the Board of Zoning Adjustment for relief once the regulations are effective. This is particularly true since the Board is authorized to grant this requested relief. The Applicant would have been vested had it not been subject to the Capital Gateway Overlay and thus been able to apply to the Board rather than the Commission.

March 26, 2007

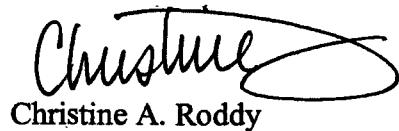
Page 5

The Applicant appreciates the Commission's consideration of these issues and it appreciates the feedback provided by the Office of Planning as well as the Office of the Attorney General. The Applicant submits herewith a revised draft proposed findings of fact and conclusions of law to account for the revisions made herein.

Sincerely,



John T. Epting



Christine A. Roddy

Attachment

cc: ANC 6D
Rhonda Hamilton, SMD
Matt Jesick, OP

Certificate of Service

I certify that on 26, 2007, I delivered a copy of the foregoing document via hand delivery or first class mail to the addresses listed below.



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