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ZONING COMMISSION  
District of Columbia

CASE NO. 07-32  
EXHIBIT NO. 6

**BEFORE THE DISTRICT OF COLUMBIA  
ZONING COMMISSION**

**Application of NJA Associates LLC  
1111 New Jersey Avenue, S.E.**

**REVIEW OF BUILDINGS AND STRUCTURES ON M STREET, S.E.  
CAPITOL GATEWAY OVERLAY DISTRICT**

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**I. Background**

The subject property includes Lots 48, 52, 53, 74, and 78 in Square 743-N and covers approximately 22,018 square feet of land area. Square 743-N is bounded by L Street on the north, New Jersey Avenue on the east, M Street on the south, and 1<sup>st</sup> Street on the west in southeast Washington, D.C. The subject property occupies most of the eastern half of the square and has approximately 220 linear feet of frontage along New Jersey Avenue and 112 feet of frontage along M Street. The east entrance of the Navy Yard Metrorail Station is located at the intersection of New Jersey Avenue and M Street on the southeast corner of the site. The remainder of the subject property is currently occupied with a surface parking lot that is leased to Opus East, LLC. The site is located within the C-3-C District and also falls within the Capitol South TDR Receiving Zone. The southern portion of the subject property is located within the Capitol Gateway ("CG") Overlay District.

The Applicant intends to construct an eleven-story commercial office building with ground-floor retail uses on the subject property. The building will have an overall density of 9.8 floor-area ratio ("FAR") and will rise to a maximum height of 130 feet. The building will contain approximately 215,776 square feet of gross floor area and will also include a three-level underground parking garage. The garage will provide a total of 178 parking spaces, ninety-seven of which will be counted towards the off-street parking requirements. The proposed building will fully satisfy the requirements of Chapter 21 of the Zoning Regulations. The parking garage will be accessed from New Jersey Avenue. The proposed building will also include three thirty-foot loading berths and a separate service/delivery space. These facilities, which will comply with all applicable requirements set forth in Chapter 22 of the Zoning Regulations, will be accessed from the north-south public alley that divides Square 743-N.

Section 1610.2 of the Zoning Regulations requires review and approval by the Zoning Commission of new construction on any lot that abuts M Street, S.E. within the CG Overlay District. 11 DCMR § 1610.2. Such construction must satisfy the specific requirements set forth in sections 1604 and 1610. Section 1610.7 further provides that the Zoning Commission may also review and approve any related requests for variance or special exception relief for the subject property. This application is submitted pursuant to the review provisions of the CG Overlay District and also seeks special exception relief from the rear yard requirements of section 774. The Applicant will establish that this application satisfies the burden of proof under the CG Overlay District regulations and for the requested special exception relief at the Commission's public hearing on this application and in the Statement of the Applicant, which

ZONING COMMISSION  
District of Columbia

CASE NO. \_\_\_\_\_

EXHIBIT NO. \_\_\_\_\_

will be filed no fewer than fourteen days before the public hearing. A preliminary summary of how the application meets the required burden of proof is presented below.

## **II. Compliance with the Burden of Proof**

### **A. Capitol Gateway Overlay District (Sections 1604 and 1610)**

#### **1. Section 1604**

Section 1604 of the Zoning Regulations sets forth a number of specific requirements that apply to all new buildings, structures, and uses with frontage on M Street, S.E. within the CG Overlay District. As outlined below, the proposed project satisfies the requirements of section 1604.

§ 1604.2 *No driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building.*

There will be no driveways along M Street on the subject property. The below-grade parking garage will be accessed from New Jersey Avenue, while the building's loading facilities will be reached from the north-south public alley dividing the square.

§ 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.*

The building's entire streetwall along M Street will be set back a minimum of fifteen feet from the face of the adjacent curb at all points.

§ 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.*

At least thirty-five percent of the gross floor area on the proposed building's ground floor will be devoted to preferred retail uses. One hundred percent of the building's street frontage along M Street will be occupied by preferred retail uses.

§ 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.*

The Applicant is not requesting interim occupancy by non-preferred uses at this time. If such interim relief becomes necessary, the Applicant will modify this application accordingly.

§ 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 of the building.*

At least fifty percent of the surface area of the proposed building's streetwall along M Street will be covered by display windows with clear or low-emissivity glass.

§ 1604.7 *The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be fourteen (14) feet.*

The ground floor of the proposed building will have a clear floor-to-ceiling height of no less than fourteen feet.

§ 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.*

Because the Applicant has not yet applied for a building permit for the proposed project, section 1604.8 is not applicable to this application.

§ 1604.9 *Where preferred use retail space is required under this section and provided, the requirement of 11 DCMR § 633 to provide public space at ground level shall not apply.*

Because the subject property is not located within the CR District, section 1604.9 is not applicable to this application.

## 2. Section 1610

Section 1610.2 provides that new construction on any lot abutting M Street, S.E. within the CG Overlay District requires the review and approval of the Commission. 11 DCMR §§ 1610.2. Section 1610.3 further provides that the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation of any building along M Street must comply with the specific requirements set forth in that section. As discussed below, the proposed project is consistent with each of these requirements.

Under section 1610.3(a), any new building constructed along M Street, S.E. must help achieve the objectives of the CG Overlay District as set forth in section 1600.2 of the Zoning Regulations. As noted below, the proposed building is consistent with all of the applicable purposes of the CG Overlay.

*§ 1600.2(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.*

The Future Land Use Map designates the subject property for high-density commercial use. The District's recently adopted Comprehensive Plan notes that the high-density commercial designation is:

used to define the central employment district of the city and other major office employment centers on the downtown perimeter. It is characterized by office and mixed office/retail buildings greater than eight stories in height, although many lower scale buildings (including historic buildings) are interspersed. The corresponding Zone districts are generally C-2-C, C-3-C, C-4, and C-5, although other districts may apply.

10 DCMR § 224.14. Consistent with its designation on the Future Land Use Map, the subject property is zoned C-3-C. Although the C-3-C District generally allows a maximum height of only ninety feet and a maximum density of just 6.5 FAR, 11 DCMR § 770.1, buildings on the subject property may be constructed to a maximum height of 130 feet and a maximum density of 10.0 FAR by virtue of its location along New Jersey Avenue, S.E. within the Capitol South TDR Receiving Zone. 11 DCMR § 1709.21. The height, bulk, and design of the proposed project are consistent with the requirements of the Zoning Regulations and with the property's designation on the Future Land Use Map.

*§ 1600.2(b) Encourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural and hotel or inn uses.*

The proposed building will include 7,000 square feet of space devoted preferred retail uses on the ground floor. This space will be designed to accommodate precisely the types of retail, service, and entertainment uses encouraged by section 1600.2(b).

*§ 1600.2(c) Allow for continuation of existing industrial uses, which are important economic assets to the city, during the extended period projected for redevelopment.*

Because the subject property is not currently used for industrial purposes, section 1600.2(c) is not applicable to this application.

*§ 1600.2(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.*

Because the subject property is not located along the Anacostia riverfront, section 1600.2(d) is not applicable to this application.

*§ 1600.2(e) Require suitable ground-level retail and service uses and adequate sidewalk width along M Street, S.E., near the Navy Yard Metrorail station.*

As noted above, the proposed project will provide approximately 7,000 square feet of ground-floor retail uses. One hundred percent of the building's street frontage along M Street will be occupied by preferred retail uses. Section 1604.3 requires all new buildings along M Street to be set back at least fifteen feet from the face of the adjacent curb. The proposed building will be set back an additional sixteen feet, eight inches from the fifteen-foot setback line, resulting in a sidewalk that is more than thirty feet wide. The proposed project will further the objectives of section 1600.2(e).

*§ 1600.2(f) Provide for development of Squares 702-706 and Reservation 247 as a ballpark for major league sports and entertainment and associated uses.*

Section 1600.2(f) does not apply to this application.

*§ 1600.2(g) Provide for the establishment of South Capitol Street as a monumental civic boulevard.*

Because the subject property is not located on South Capitol Street, section 1600.2(g) is not applicable to this application.

*§ 1600.2(h) Provide for the development of Half Street S.E. as an active pedestrian-oriented street with active ground floor uses and appropriate setbacks from the street façade to ensure adequate light and air, and a pedestrian scale.*

Because the subject property is not located on Half Street, section 1600.2(h) is not applicable to this application.

*§ 1600.2(i) Provide 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.*

Because the subject property is not located on First Street, section 1600.2(i) is not applicable to this application.

Section 1610.3 provides that:

[i]n addition to proving that the proposed use, building, or structure meets the standards set forth in section 3104, an applicant requesting approval under this section must prove that the proposed building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will [satisfy the requirements of this section.]

11 DCMR § 1610.3. The proposed development will satisfy the standards of section 3104. Specifically, the new building will be in harmony with the Zoning Regulations and Zoning Map, and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. Furthermore, the proposed project will satisfy each of the requirements set forth in section 1610.3 as discussed below.

§ 1610.3(a) *The proposed building, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will help achieve the objectives of the CG Overlay District as set forth in § 1600.2.*

As discussed in detail above, the proposed building will further the objectives of the CG Overlay District.

§ 1610.3(b) *The proposed building, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will help achieve the mix of uses in the CG Overlay District as set forth in §§ 1600.2(a) and (b), with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail, or service uses.*

The provision of significant new commercial office and retail uses at this location will further the policies of the Comprehensive Plan and is thus consistent with section 1600.2(a). As noted above, the proposed building will include 7,000 square feet of gross floor area devoted to preferred retail uses on the ground floor and will be designed to accommodate precisely the types of retail, service, and entertainment uses encouraged by section 1600.2(b).

§ 1610.3(c) *The proposed building, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will be in context with the surrounding neighborhood and street patterns.*

The height, bulk, and architectural design of the proposed building will be in harmony with the context of the surrounding neighborhood and will have no effect on the configuration of the existing street grid.

§ 1610.3(d) *The proposed building, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will minimize conflict between vehicles and pedestrians.*

Because the entrance to the underground parking garage is located on New Jersey Avenue—rather than on M Street or along the public alley to the west—the building's design will

minimize the number of vehicles that must cross the sidewalk along M Street. This design feature will significantly reduce conflicts between vehicles and pedestrians on an important and heavily traveled street.

*§ 1610.3(e) The proposed building, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will minimize unarticulated blank walls adjacent to public spaces through façade articulation.*

As illustrated on Sheet R-2 of the Architectural Plans and Elevations, the proposed building's south façade has been designed to enhance the streetwall along M Street. The proposed retail uses on the ground floor will provide a vibrant pedestrian experience along this important street.

*§ 1610.3(b) The proposed building, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certified standards.*

The project is located directly on top of the Navy Yard Metrorail station and is a fine example of transit-oriented development. By providing office space in close proximity to public transit, the proposed development will reduce both traffic congestion and automobile emissions. The proposed project represents precisely the kind of sustainable development encouraged by the D.C. Office of Planning. The Applicant intends to seek a LEED Silver rating for the project from the U.S. Green Building Council. A table describing the sustainable design elements to be incorporated into the project will be provided with the Applicant's prehearing statement.

#### **B. Special Exception Relief from the Rear Yard Requirements (Section 774)**

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning district, provided the specific regulatory requirements for the requested relief are satisfied. Section 774.1 of the Zoning Regulations requires all structures located in the C-3-C District to provide a rear yard with a minimum depth of 2.5 inches for each foot of vertical distance between the mean finished grade at the rear of the building and the highest point of the structure's main roof or parapet wall. Where a lot is contiguous to a public alley, however, no rear yard is required below a horizontal plane drawn twenty feet above the mean finished grade at the middle of the building's rear wall. 11 DCMR § 774.9(a). The strict application of this provision would thus require the Applicant to provide a rear yard that is 25 feet, 10 inches deep. The proposed project, however, will include a rear yard that is only seven feet in depth.<sup>1</sup> Section 774.2 of the Zoning Regulations authorizes the Board to waive the rear yard requirement for the C-3-C District in accordance with the requirements of Section 3104 for special exceptions, provided that the standards in Sections 774.3 through 774.6 are met. As discussed below, these standards are satisfied in this case. The Board can thus grant the requested relief.

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<sup>1</sup> Although the proposed building is built out to the rear lot line, the lot abuts a fourteen-foot public alley. Under section 774.9(a) of the Zoning Regulations, the rear yard of a structure on a lot that abuts a public alley may be measured from the rear wall of the building to the centerline of the adjacent alley.



*§ 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.*

The Applicant seeks to build an eleven-story office building on the subject property. As shown on the architectural plans and elevations for the project, the rear elevation of the proposed building is separated from the western half of Square 743-N by a public alley that is approximately fourteen feet in width. A twelve-story office building (100 M Street, S.E.) and a fourteen-story residential building (1100 First Street, S.E.) are currently under construction on the western half of the square.

Although the rear yard of the Applicant's proposed building will measure only seven feet in depth, the minimum distance between the Applicant's building and the office building across the alley will range between fourteen and thirty-five feet. In other words, the average distance between the structures will provide approximately the same amount of open space as the rear yard required by section 774 of the Zoning Regulations. This space will provide sufficient light and air and will adequately protect the privacy of each building's occupants. The residential building, on the other hand, includes a large courtyard adjacent to the alley; the building's facing windows will be separated from the Applicant's building by nearly 100 feet—far more distance than would have been provided by the required rear yard.

*§ 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.*

There will be no habitable rooms in either the Applicant's building or the office building located directly across the alley; both buildings will be devoted exclusively to commercial uses. The windows along the east side of the adjacent building, moreover, are located along the property line of a separate lot and are thus not required for light and ventilation under the Zoning Regulations. Visual penetration into the windows along the north side of the adjacent building will be minimized by the relative orientation of the two buildings. The rear elevation of the Applicant's proposed building runs parallel to New Jersey Avenue and the public alley through the square. The north façade of the building across the alley will run nearly perpendicular to the rear wall of the Applicant's building, thus minimizing visual penetration into the office windows of both buildings. As noted above, the facing windows of the residential building to the northwest will be separated from the Applicant's building by approximately 100 feet.

*§ 774.5 The building plan shall include provisions for adequate off-street service functions, including parking and loading areas and access points.*

Under sections 2101 and 2104 of the Zoning Regulations, the proposed building is required to provide eighty-eight off-street parking spaces. As shown on the architectural plans for the project, the proposed building will include a total of 178 spaces, which will be located in a below-grade parking garage that is accessed from New Jersey Avenue, S.E. Ninety-seven of

these spaces will be counted towards the off-street parking requirements.<sup>2</sup> The parking garage and the parking spaces meet the size, location, access, maintenance, and operation requirements contained in Chapter 21 of the Zoning Regulations. The project also includes three thirty-foot loading berths, as well as the service and delivery area and loading platforms required by Chapter 22 of the Zoning Regulations. In sum, the proposed project will provide for adequate off-street service functions.

*§ 774.6 Upon receiving an application for 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.*

The Applicant understands that this application will be submitted to the relevant agencies for review prior to consideration by the Commission.

The proposed waiver complies with the spirit and intent of the Zoning Regulations by ensuring adequate light and air to adjacent property and abutting streets. Accordingly, the proposed waiver is in harmony with the purpose and intent of the Zoning Regulations and should be granted.

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<sup>2</sup> Eighty-one of the parking spaces in the underground garage are located in vaults beneath public space and are thus not counted towards the off-street parking requirements.