

SUPPLEMENTAL STATEMENT WITH RESPECT TO
ZONING COMMISSION APPROVAL OF (A) PROPOSED BUILDING WITH FRONTAGE
ON M STREET, S.E. PURSUANT TO THE SEFC OVERLAY DISTRICT AND (B) A
SPECIAL EXCEPTION AND AREA VARIANCES

**Application of the United States of America by Forest City
Washington for Zoning Commission Approval of Proposed Mixed
Use Building Containing Office, Residential and Retail Uses at the
Property located on the Southeast Corner of M Street and 4th
Street, S.E. in the Southeast Federal Center**

April 4, 2008

This Supplemental Filing Statement (the "Statement") is submitted on behalf of Forest City SEFC, LLC (the "Applicant") on behalf of the United States of America, owner of the subject property, by the Applicant's attorneys, Greenstein DeLorme & Luchs, P.C., by Jacques B. DePuy, Esquire and Stephanie A. Baldwin, Esquire, in support of an application for Zoning Commission approval of (a) a proposed building with frontage on M Street, S.E. at a height of 110 feet pursuant to Sections 1803.6 and 1803.8 of the Southeast Federal Center Overlay District (the "SEFC Overlay") and (b) the special exception and area variances described below (the "Application").

I.

Summary of Application. The Application was filed on January 14, 2008. The Application seeks Zoning Commission review and approval as follows:

(A) to allow the construction of a building within the Southeast Federal Center that fronts M Street, S.E. at a height of 110 feet pursuant to Sections 1803.6 and 1803.8;

(B) a grant of a special exception from the rooftop structure requirements of Section 639;
and

(C) a grant of area variance relief pursuant to Section 3103 from the rear yard requirements of Section 636, the preferred use requirements of Section 1803.3, and the loading requirements of Section 2201.1.

II.

Property Description and Location; Existing Zoning. The subject property is located in the Southeast Federal Center ("SEFC") in southeast Washington, D.C. along the Anacostia River (the "Property"). The Property is part of a larger site that was formerly an annex to the Navy Yard and is currently being developed by the Applicant as a vibrant, mixed-use, waterfront neighborhood known as "The Yards."

ZONING COMMISSION
District of Columbia

CASE NO. 08-01

ZONING COMMISSION
District of Columbia
CASE NO. 08-01
EXHIBIT NO. 25

D.C. OFFICE OF ZONING

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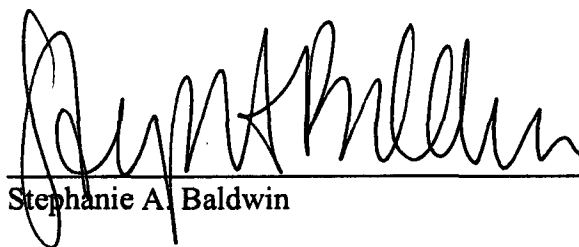
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Supplemental Statement of the Applicant was mailed, first-class, postage prepaid, or sent by electronic mail, this 4th day of April, 2008, to:

Advisory Neighborhood Commission 6D
c/o Ms. Roberta Weiner, Secretary
25 M Street, S.W.
Washington, D.C. 20024

Mr. Joel Lawson
Office of Planning
801 North Capitol Street, N.E., Fourth Floor
Washington, D.C. 20002



Stephanie A. Baldwin

The Property consists of approximately 101,376 square feet of land and is located on the south side of M Street, S.E., east of 4th Street, S.E. The Property is also known as "Parcel D". (See the "Proposed Building Plat" included in the Plans Packet as Sheet "A5".)

The Property is bounded on the north by M Street, S.E., on the south by the extension of proposed Tingey Street, S.E., on the west by 4th Street, S.E. and on the east by "Parcel E1", on which the historic "Building 202" is located. A private drive will be located between Parcel D and Building 202. The new U.S. Department of Transportation headquarters building and an historic building known as Building 167 are located across 4th Street from the Property. Also in the vicinity of the SEFC site and Property is the new Baseball Stadium, located west of 1st Street, S.E.

A Metrorail tunnel and easement area, owned by the Washington Metropolitan Area Transit Authority, are located below a portion of the Property. A 100-year flood plain designation also encumbers the Property.

An historic brick structure known as the "Sentry Tower and Wall" borders the northern edge of the Property along M Street and a portion of the western edge of the Property at the corner of 4th and M Streets. The brick wall is approximately twelve feet (12 ft.) in height. At the corner is a guard turret. The Sentry Tower and Wall were constructed in 1901.

III.

Southeast Federal Center. The Property is a part of the forty-two (42) acre site known as the Southeast Federal Center. The boundaries of the SEFC site are roughly M Street S.E. and the U.S. Department of Transportation headquarters to the north, the Anacostia River to the south, 1st Street, S.E. and the District of Columbia Water and Sewer Authority Pumping Station facility to the west and the Navy Yard to the east. The SEFC, including the Property, is owned by the United States Government and managed by the General Services Administration ("GSA").

The Property is zoned SEFC/CR and is located within the Southeast Federal Center Overlay District ("SEFC Overlay District").

IV.

History and Historic Nature of the SEFC Site. Historically, the SEFC site was a part of the Navy Yard. The original Navy Yard was set aside by George Washington for use by the federal government. The original boundaries of the Navy Yard were established along 9th and M Streets, S.E., in 1800. These boundaries are still marked by a white brick wall that was built in 1809.

During the early part of the twentieth century, the size of the Navy Yard tripled due to needs attributable to the Spanish-American War and the two world wars. During the Second World War, the Navy Yard became a center for weapons production and naval vessel repair and production.

In 1962, naval and weapons production on the site was suspended and the Navy Yard was divided into two parts. The eastern half continued to be occupied by the U.S. Navy for administrative purposes. Jurisdiction over the western half, which is now the SEFC site, was transferred to GSA. Since the 1960s, under the control of GSA, the buildings within the former industrial site have been used by various federal government agencies and departments.

The SEFC site was determined eligible for listing in the National Register of Historic Places by the Keeper of the National Register on December 7, 1977. In February, 2008, the District of Columbia Historic Preservation Review Board approved the expansion of the Washington Navy Yard Historic District to include the area, buildings, structures, and archaeological resources of the SEFC site, in HPRB Case #08-05. The amendment of the District of Columbia and National Register designations of the Washington Navy Yard Historic District were forwarded to the National Register of Historic Places with a positive recommendation.

V.

P.L. 106-407; Adoption of Zoning and Historic Preservation Controls for SEFC Site.

Pursuant to the enactment of the Southeast Federal Center Public-Private Development Act of 2000 (Public Law 106-407), GSA was given the authority to work with the private sector to develop the SEFC site. In 2003, GSA requested that the D.C. Zoning Commission establish zoning for the SEFC site which would encourage the development of a mixed-use, waterfront neighborhood to include office space, residential and commercial uses, as well as a waterfront park and open space. The SEFC Overlay District was adopted by the Zoning Commission on January 12, 2004 and amended on March 8, 2004. The Order for the case, Zoning Commission Order No. 03-06, was published on July 9, 2004.

As a means of avoiding, minimizing, or mitigating any potential adverse effects on historic properties within the SEFC site caused by the planned development, Historic Preservation Design Guidelines were also prepared in consultation with the District of Columbia State Historic Preservation Officer ("SHPO") and the Advisory Council on Historic Preservation (the "Advisory Council"), and incorporated into the Programmatic Agreement between the GSA, the Advisory Council and the SHPO (the "Design Guidelines"). The Design Guidelines provide a framework for the treatment of the historic structures, site features, street improvements, and new construction within the SEFC site.

VI.

Master Developer; Plans for the Development of the SEFC Site. Forest City was selected by GSA in the Fall, 2004 to become the Master Developer of the Southeast Federal Center. Subsequent to its designation as Master Developer, the Applicant has worked closely with GSA -- and with numerous federal and local government agencies, particularly including the Office of Planning, ANC 6D and other stakeholders -- to plan the redevelopment of the SEFC site.

The redevelopment of the SEFC site is the largest project of its kind in the District of Columbia. Known as "The Yards", the development will include approximately 5.5 million

square feet of new development and re-development, including residential units, office space, retail and dining space, a public park and riverfront esplanade and trail that will connect with the Navy Yard's riverfront walk to the east and a similar feature to the west, which will connect with the Ballpark District. The project also involves the adaptive reuse of several historic, formerly industrial buildings located on the site.

With more than 30 buildings planned overall, The Yards will ultimately generate millions of dollars annually for the District from land which was not previously on the District of Columbia's tax rolls, thousands of new residents, and hundreds of construction and permanent jobs. Furthermore, the project will provide affordable housing, LSDBE, job training and First Source hiring programs throughout the multi-phase development of the site.

Construction on The Yards site commenced with the construction of street and other infrastructure improvements in the Fall of 2007. Several buildings, including four of the historic structures, are currently under design.

VII.

Proposed Map and Text Amendments to the SEFC Overlay District. Proposed map and text amendments to the SEFC Overlay District regulations are currently pending before the Zoning Commission pursuant to Zoning Commission Case No. 07-11. The amendments were published in the District of Columbia Register on March 7, 2008 as a proposed rulemaking. The purpose and intent of these text and map amendments can be summarized as follows: Upon the establishment of the SEFC Overlay in 2004, it was anticipated that amendments to the SEFC Overlay District regulations would be necessary as plans for The Yards were developed. Accordingly, the amendments to the Zoning Map adjust the boundary between The Yards and the adjacent Navy Yard, and adjust the boundary lines of the underlying zones within the Overlay District to correspond with modifications to certain rights-of-way planned within the site. As well, the text amendments address site development issues, clarify requirements of the SEFC Overlay District and correct technical errors.

In particular, one of the proposed amendments, which proposes to modify the preferred use requirements of Section 1803.3, is relevant to the subject Application and one of the variances sought herein. Currently, if preferred uses are provided on the ground floor level of buildings within the SEFC/CR zone district even if not required by the Zoning Regulations, the building containing such preferred uses must still comply with the design requirements of Section 1803.3 (including a specified percentage of streetwall glass, minimum floor-to-ceiling heights and direct, exterior access requirements). The text amendments currently under consideration will eliminate this requirement. Thus, if the Zoning Commission adopts this proposal and if it does so prior to approval of the subject Application, the variance from the preferred use requirements sought herein will no longer be necessary.

VIII.

Existing and Intended Use. The Property is currently paved but otherwise unimproved. The Applicant proposes to construct a mixed-use building to include an eleven-story residential tower and a ten-story office tower. The office portion of the building will contain retail uses,

including a grocery store, on the ground level (and mezzanine) along 4th Street. The residential portion of the building will contain retail and/or residential uses or amenities on the ground floor along Tingey Street. The use of the Property for both residential and commercial purposes, including the grocery store, is permitted as a matter-of-right within the SEFC/CR zone district pursuant to Sections 1803.3 and 1807.

IX.

Description of the Proposed Mixed-Use Development. The proposed building will include two towers with a shared loading pavilion between the two towers and below grade parking (the “Building”). The north tower of the Building will be located on the corner of M and 4th Streets, S.E. (the “North Tower”). It will have ten (10) stories and be developed to a height of 110 feet. The North Tower will include a proposed grocery store with a partial mezzanine of approximately 51,300 gross square feet. An office lobby will be located on the ground floor of the North Tower. The Building will contain approximately 336,700 gross square feet of office use. Two opening are proposed in the Sentry Tower and Wall in order to provide an ADA-compliant pedestrian entry from the M Street, S.E. sidewalk to the Property, subject to historic preservation approvals.

The south tower of the development will be located on the corner of 4th and Tingey Streets, S.E. (the “South Tower”). Tingey Street to the west of the Property has been dedicated as a public street. Tingey Street to the east of 4th Street is proposed to be dedicated. The South Tower will have eleven (11) stories and be developed to a height of 110 feet. The South Tower will provide approximately 5,400 square feet of ground floor retail and between 170-200 residential units. The residential lobby will face Tingey Street.

The Building will have two (2) levels of below-grade parking and a common covered loading space between the North and South Towers, which will be shared by the occupants of the Building. Additionally, a potential green roof will be located on the third floor of the Building, above the loading area, between the North and South Towers. As well, there will be an option for a terrace on the third floor for the occupants of the office tower. The plans for the development of the Building will incorporate many environmentally responsible and sustainable features and will pursue “LEED Certification”.

A minimum of three hundred and twenty-five (325) parking spaces will be provided in the parking garage. The loading area will include a total of nine (9) loading facilities. Included among the loading facilities will be two (2) fifty-five foot (55 ft.) loading berths, four (4) thirty foot (30 ft.) loading berths and three (3) twenty foot (20 ft.) loading spaces.

The design of the Building is consistent with the Design Guidelines. The Design Guidelines require new construction to have an industrial character and consist of materials, colors, and textures which reflect the character of the historic SEFC site. To that end, the architect has designed the Building to reflect characteristics common to industrial structures, including repetitive modular facades and simple massing assemblages. As well, the design of the Building intentionally includes exposed rooftop mechanicals which are typical of an industrial vernacular.

X.

Combined Lot Development. Pursuant to Sections 1803.4 and 1810 of the Zoning Regulations, a combined lot development is permitted within the SEFC/CR zone district for the purpose of allocating residential and non-residential uses. The Applicant proposes to include the Property in a combined lot development with Parcel K (Square 801, Lot 803). (See “Combined Lot Development” included in the Plans Packet as Sheet “A2”.) The Applicant intends to file an instrument with the Zoning Administrator which binds the present and future owners of the two lots to devote the residential and non-residential gross floor area on each lot in an amount equal to the square footage transferred or received and which specifies the allocation of residential and non-residential uses between the lots.

XI.

Statement of Satisfaction of Burden of Proof for Zoning Approvals Sought. The Applicant submits that, based upon (i) its Application and the materials submitted in conjunction therewith, (ii) the evidence to be presented at the public hearing and (iii) other evidence to be submitted subsequent hereto, it will satisfy and comply with the legal standards and burdens of proof applicable to Zoning Commission review pursuant to Section 1809 of the SEFC Overlay and to the special exception and area variances requested.

A. Zoning Commission Review and Approval Pursuant to
Section 1809 of the SEFC Overlay

Section 1803.8: Review of Buildings Located along M Street, S.E. Pursuant to Section 1803.8 of the Zoning Regulations, the construction of a building along M Street, S.E. is permitted pursuant to Zoning Commission review in accordance with the standards of Section 1808. Section 1808 requires that the proposed building meet the standards of Section 3104.1 as well as the standards of Section 1808.

The Application will satisfy the requirements of Section 3104.1 of the Zoning Regulations which require a special exception to be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and to not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps... ."

The proposed Building will not cause objectionable conditions or adversely affect neighboring or nearby property.

The Building will be the first new building to be constructed on The Yards site. This prominent new construction will contribute to the emerging character of the area and help to define the neighborhood. In addition, the design of the Building's façades involves a varied compilation of materials and is in harmony with the historic industrial character of The Yards and the nearby Navy Yard. Furthermore, the Building will include many aspects of environmentally responsible and sustainable development, including a green roof, bike storage for both the office occupants and residents, reduced water-usage systems and redevelopment of a Brownfield. The grocery store planned for the Property will provide a growing but underserved

community with a highly essential retail service. Finally, the Building will not adversely affect the use of the USDOT headquarters, the Navy Yard or other neighboring property.

The Application also complies with the standards of Section 1808. The requirements of Section 1808 are set forth and discussed below.

The use, building, or structure will help achieve the objectives of the SEFC Overlay District as set forth in § 1802.

In accordance with the objectives of the SEFC Overlay District and the Near Southeast Urban Design Framework Plan, the proposed development of the Property consists of a high density mixed development of both residential and commercial uses. The proposed Building will offer a pedestrian-oriented streetscape and provide the burgeoning neighborhood with a much needed large-scale supermarket. Furthermore, the proposed height of the Building is appropriate for its location along M Street, particularly in relationship to the USDOT headquarters building across 4th Street, and the design of the Building is sensitive to the adjacent Navy Yard as well as the historically significant buildings located with The Yards.

The proposed building or structure shall be designed with a height, bulk, and siting that provide for openness of view and vistas to and from the waterfront and, where feasible, shall maintain views of federal monumental buildings, particularly along the New Jersey Avenue, S.E. corridor.

Located along M, 4th and Tingey Streets within The Yards, the Property is two (2) blocks from the waterfront. The height of the proposed Building is one hundred ten feet (110 ft.). The Building's proposed height is comparable to the height of the USDOT Building located directly across 4th Street, which measures at a maximum height to the top of the parapet of approximately 109 feet and a maximum height to the top of the atrium of approximately 118 feet. The Building's proposed height is also comparable to the height of other nearby buildings on M Street and with the scale of the new Ballpark.

On or above-grade parking adjacent to, or visible from, the street shall be limited. Where parking cannot be placed underground, other uses such as retail or residential shall separate parking areas from the street, or where this is not possible, green landscaping or architectural treatment of facades shall adequately screen parking from the street and adjacent development.

All parking for the Building will be located in a below-grade parking structure. The loading facilities for the Property will be located within the Building and will be covered by a potential green roof and thus screened from view.

Section 1803.6: Building Height. Pursuant to Section 1803.6 of the Zoning Regulations, the construction of a building at a height of greater than ninety feet (90 ft.) is permitted for sites fronting on M Street, S.E. east of 4th Street, S.E. upon review and approval by the Zoning Commission. Under Section 1803.6, the Commission is charged with considering the relationship of the proposed Building to the existing Navy Yard to the east.

Located on the corner of M and 4th Streets, S.E., the proposed Building is located immediately across 4th Street from the US DOT Building. Directly across the street from the Property, the eastern US DOT tower is 109 feet to the top of its parapet and a maximum height to the top of the atrium of approximately 118 feet, while the western US DOT tower is a maximum of 120 feet in height. As well, in close vicinity of the Property are numerous other 110-foot tall buildings along M Street. Due to its location at the corner of M and 4th Streets, the Property is also the site furthest from the existing Navy Yard within the CR zone district that is between the US DOT and the Navy Yard. Additionally, the Property is separated from the Navy Yard by existing Building 202. As such, the height of the proposed Building would have no meaningful effect on the Navy Yard. Moreover, the Future Land Use Map of the Comprehensive Plan designates the Property as "high density residential" and "high density commercial" Thus, the height of the proposed Building is appropriate and consistent with SEFC guidelines and standards.

It should be noted that the proposed design of the Building, including the height of 110 feet, was approved by the National Capital Planning Commission ("NCPC") at its July 2007 meeting. The review was performed by NCPC pursuant to a 35% design review requirement in accordance with the Memorandum of Understanding between GSA and NCPC, dated June 6, 2005.¹ Additionally, the proposed design (including the height) was also reviewed and approved by the Commission of Fine Arts ("CFA") pursuant to a 35% design review requirement in accordance with a Memorandum of Agreement between GSA and CFA, dated July 1, 2005.

B. Special Exception

A special exception is sought pursuant to the Zoning Regulations, 11 DCMR Section 3104.1 from the roof structure requirements of Section 639. [Section 639 incorporates the standards and requirements of Section 411 into the CR zone district.] Section 3104.1 of the Zoning Regulations requires a special exception to be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and to not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps"

Under Section 411 of the Zoning Regulations the enclosing walls of a roof structure must be of equal height. The Applicant requests relief from this requirement. [The design of the proposed rooftop structures complies with all other requirements of Section 411, including the 1:1 setback from the edge of the roof and the limitation of one (1) enclosure per roof level and/or elevator core.] The architect has purposely designed the rooftop structures with enclosing walls of varying heights in order to expose portions of the otherwise "enclosed" mechanical equipment. This has been undertaken in an effort to attain an industrial design aesthetic and to comply with the Design Guidelines (as discussed below).

The proposed "unequal" heights of the rooftop enclosures are in accordance with the Design Guidelines. According to Section 5.4.0 of the Design Guidelines (entitled "Historic

¹ This Application was also subject to review and comment by NCPC pursuant to Section 3012.1 of the Zoning Regulations. NCPC placed this Application on the Consent Calendar for its April 3, 2008 meeting. According to the recommendation of the Acting Executive Director, the proposed project was found not inconsistent with the Comprehensive Plan for the National Capital nor adverse to any other federal interest.

Zone”), planned new construction within the historic zone should “relate to existing industrial buildings in massing and structural characteristics, material usage, and façade treatments.” Specifically, pursuant to Section 5.4.3.5 (entitled “New Construction”), the “[o]verall appearance should be reflective of the variety of scale, size, massing, footprints, and aesthetic of the extant historic resources associated with the Navy Yard Annex on the [SEFC] [s]ite and related to buildings associated with the adjacent Navy Yard.” Furthermore, Section 5.4.3.5 emphasizes particular design features including “exterior expression of the structural bays, articulated roof lines, large bay size, and maximum window area expressed through large window openings filled with multi-light metal framing”.

The proposed unequal heights of the rooftop enclosures will not cause objectionable conditions or adversely affect neighboring or nearby property. In fact, such unequal heights will result in portions of the penthouse being at a lower height than allowed by the Zoning Regulations. Moreover, the uneven heights will establish an articulated roof line for the Building as encouraged in the Design Guidelines. Furthermore, the design is in harmony with the historic industrial character of The Yards and the Navy Yard. Finally, the uneven heights will break up the massing of the rooftop structures and make them more visually attractive.

C. Area Variances

With regard to the Applicant's requested area variances, the Application satisfies the requirements of Section 3103.2 of the Zoning Regulations. Pursuant to that Section, the Commission is authorized to grant area variances where it finds that three conditions exist. First, the Property must be unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the Property; second, the Applicant must demonstrate that due to these exceptional circumstances it will encounter practical difficulty if the Zoning Regulations are strictly applied; and third, the requested area variances will not result in substantial detriment to the public good or the zone plan.

The Property has several exceptional conditions:

- First, the historic Sentry Tower and Wall, which are located along the northern and northwestern boundaries of the Property, separate the site from and prohibit any main entrances on M Street. [Such condition thus forces any development of the Property to be oriented towards 4th and Tingey Street, notwithstanding the prominence of M Street.]
- Second, the Property is encumbered by a WMATA Metrorail tunnel easement and zone of influence.
- Third, the site is subject to a 100-year flood plain and, as a result, several flood plain retaining walls must be installed in the southeast corner of the Property.
- Fourth, as a property used throughout its long history by the Federal government for military and other uses, The Yards is unique in that it currently lacks internal dedicated public streets. The site is the subject of an Application for street dedications with the District of Columbia Office of the Surveyor (the “D.C.

Surveyor”). That Application, S.O. 07-8801/07-8802 which includes Tingey Street, S.E. east of 4th Street, S.E. [the southern boundary of the Property], is currently under review by D.C. agencies and utilities and has thus not been acted upon by the D.C. Council. As such, the Property is expected to be, but is not yet, bounded by public streets on three (3) of its sides.

Rear Yard Variance. Pursuant to Section 636.1 of the Zoning Regulations, a rear yard is required for each residential building or structure located in a CR zone district. According to Section 636.3, residential use which begins above grade must have a rear yard at a minimum depth of three inches per one foot (3 in./ 1 ft.) of vertical distance from the horizontal plane upon which the residential use begins to the highest point of the main roof, but not less than twelve feet (12 ft.). Accordingly, the Building is required to have a rear yard of twenty-eight and one-quarter feet (28.25 ft.). The Building has provided a rear yard of 12.58 feet. Thus, the applicant seeks a variance of 15.67 feet.

Under Section 636.5, where a lot abuts three (3) or more [public] streets, no rear yard is required for any building or structure located on the lot. The Property is bounded by two dedicated streets and one proposed street: M Street, S.E. to the north, 4th Street, S.E. to the east, and proposed Tingey Street, S.E. to the south. M and 4th Streets, S.E. are open and dedicated public streets. However, that portion of Tingey Street, S.E. which abuts the Property is proposed for, but has not yet been dedicated for, public use. Accordingly, although the Property is not currently bounded by three (3) public streets, the Property is planned to be bounded by three (3) public streets. Thus, when Tingey Street is dedicated, the Building will meet the requirements of Section 636.5. Furthermore, even if Tingey Street was not dedicated for public use, the street would still exist as a private street and function in the same manner for purposes of Section 636.5 and would provide light and air for residential occupants of the Building. As well, the proposed South Tower, which contains the residential units in the Building, will have significant “set backs” and open space on each of its sides. Specifically, on the west of the South Tower is 4th Street, S.E., which is a seventy foot (70 ft.) right-of-way, on the south is Tingey Street, which will be a ninety foot (90 ft.) right-of-way, on the east is a private drive, which will be approximately thirty feet (30 ft.) in width, and to the north, the South Tower will be set back from the North Tower by (i) the loading driveway by approximately thirty-one feet (31 ft.) and (ii) the terrace over the Building’s loading area by approximately seventy-eight feet (78 ft.).

Strict application of the Zoning Regulations would result in a practical difficulty if the Property is required to have a rear yard because of the limitations and uniqueness of the site (described above), including the facts that the (i) entire frontage on M Street is blocked by the historic Sentry Tower and Wall; and (ii) the multiplicity of uses and functions that the Building proposes to accommodate, including a grocery store, ground floor retail, a large covered loading area, office and residential lobbies, residential amenity space and others preclude a larger rear yard. Moreover, if this Application was filed after the dedication of Tingey Street, no variance from the rear yard requirements would be necessary. Additionally, the South Tower will be set back from the North Tower, as well as from neighboring properties, by considerable depths. As such, the Applicant’s requested variance from Section 636 will not result in substantial detriment to the public good or the zone plan.

Preferred Use Variance. According to the preferred use requirements of Section 1803.3, preferred uses may be provided on the ground floor level of buildings without frontage on M Street west of 4th Street, or on New Jersey Avenue, S.E., but are not required. However, if preferred uses are provided, the building containing them must conform with the requirements of Section 1803.3. Pursuant to Section, the following requirements must be met: (i) not less than fifty percent (50%) of the surface area of the streetwall, including building entrances, shall be devoted to doors or display windows having clear or low-emissivity glass (§1803.3(e)); (ii) preferred uses shall provide direct, exterior access to the ground level (§1803.3(f)); and (iii) the minimum floor-to-ceiling height for portions of the ground floor level devoted to preferred uses shall be fifteen feet (15 ft.) (§1803.3(g)).

The preferred use requirements and policies of the SEFC Overlay are intended to create pedestrian friendly retail space which will enliven and energize the streets of the Yards neighborhood. To this end, the Applicant has made specific design choices to create retail space which is suitable to the needs of the grocery store tenant and which will serve to stimulate the streetscape. However, although these design decisions meet the spirit of the preferred use requirements, they do not meet all the technical requirements. Consequently, the proposed grocery store in the North Tower will not devote fifty percent (50%) of its streetwall to display windows having clear or low-emissivity glass (although the separate retail space in the South Tower will meet this requirement). As well, neither the grocery store in the North Tower nor the retail space in either portion of the Building provides a floor-to-ceiling height of fifteen foot (15 ft.) at grade. Thus, the Applicant must seek a variance from these requirements.²

Although the grocery store will have windows and glass door entrances, and could conceivably devote the requisite 50% of its streetwall to low-emissivity glass, it is not typical for grocery stores to have such large amounts of window display space and is not sought by the proposed grocery store tenant. As well, a portion of the grocery store's 4th Street streetwall is blocked by the Sentry Tower and Wall. However, although the grocery store streetwall does not include 50% low-emissivity glass, the majority of the streetwalls are either low-emissivity glass or translucent glass. As such, the streetwalls will be animated and will allow natural light. Furthermore, the design of the grocery store's streetwall is a superior design which has been carefully crafted to meet the needs of the grocery store tenant and, at the same time reflect a vibrant interpretation of the historic industrial character of the former Navy Yard site.

With regard to the ground floor height requirements, the proposed ground floor height is fourteen feet (14 ft.)³ for the North Tower and thirteen feet (13 ft.) for the South Tower. If the fifteen foot (15 ft.) ground floor height was required, the Applicant would lose a partial floor of the North Tower and a full floor of the South Tower. However, by reducing the height by only a few feet, the Applicant is able to keep these top floors, a gain of a substantial amount of usable GFA. Furthermore, the fifteen foot (15 ft.) ground floor height requirement is unique to the SEFC Overlay District. Similar Overlay Districts recently established by the Zoning Commission have only required a fourteen foot (14 ft.) floor-to-ceiling ground floor height,

² The proposed retail space and grocery store will provide direct, exterior access at the ground level in accordance with Section 1803.3(f)).

³ Only that portion of the ground floor of the grocery store which is under the second floor of the grocery store will be restricted to a height of fourteen feet (14 ft.). The remainder of the grocery store will be a minimum of twenty feet (20 ft.) in height.

including the Capitol Gateway Overlay and the H Street NE Neighborhood Commercial Overlay.⁴ Thus, providing a fourteen foot (14 ft.) ground floor height is consistent with other new ground floor retail construction (and other zoning requirements) within the District, and the thirteen foot (13 ft.) ground floor height in the South Tower is a minor deviation.

Strict application of the Zoning Regulations would result in a practical difficulty. The requirement of fifty percent glass windows for the grocery store space is incompatible with standard grocery store use. Therefore, the Applicant requests a variance to permit a lesser percentage of glass doors and display windows for the grocery store's streetwall. Furthermore, if the Applicant was required to comply with the fifteen foot floor-to-ceiling requirements of Section 1803.3, the Applicant would be forced to eliminate one floor in the South Tower and a partial floor in the North Tower.

The requested variances will not result in substantial detriment to the public good or the zone plan. There will also be no adverse impacts from the variances requested and thus no "substantial detriment to the public good" and no substantial impairment of "the intent, purpose and integrity of the Zoning Regulations and Map." Additionally, the proposed Building will provide substantial benefits to the community, including quality residential and office space, underground parking and ground floor retail. Moreover, the proposed Building will provide the Yards, as well as the greater southeast neighborhood, including the redeveloped mixed-income Capper/Carrollsborg community, with a neighborhood grocery store.

Although the Applicant will not provide the requisite glass streetwall for the grocery store, that portion of the grocery store's streetwall visible from M Street and 4th Street will be animated and will include a lesser percentage of low emissivity glass. Furthermore, the proposed grocery store will provide a substantial benefit to the Yards community, the Capper Carrollsborg property and the neighborhood near the Baseball Stadium. As well, the fourteen foot (14 ft.) ground floor-to-ceiling height for the retail and grocery space is consistent with ground floor retail height requirements of other recently established overlay districts. No adverse impacts will result from the variances requested, nor will the requested variances cause substantial detriment to the public good or impairment of zone plan.

Loading Variance. Pursuant to Section 2201.1, the four different uses within the proposed Building result in four separate requirements for loading. Within the SEFC/CR zone district, the Applicant is required to provide the following loading for each of the four uses:

- (i) for the proposed 51,300 square feet grocery store, the Applicant is required to provide one (1) fifty-five foot (55 ft.) deep loading berth, one (1) two hundred square foot (200 sq. ft.) loading platform, one (1) thirty-foot (30 ft.) deep loading berth, one (1) one hundred square foot (100 sq. ft.) loading platform and one (1) twenty foot (20 ft.) deep loading space;
- (ii) for the proposed 336,700 square feet of office space, the Applicant is required to provide three (3) thirty-foot (30 ft.) deep loading berths, three (3) one

⁴ The Georgia Avenue Commercial Overlay District also only requires a fourteen foot (14 ft.) floor-to-ceiling height.

hundred square foot (100 sq. ft.) loading platforms and one (1) twenty foot (20 ft.) deep loading space;

- (iii) for the proposed 5,400 square feet of retail use, the Applicant is required to provide one (1) thirty-foot (30 ft.) deep loading berth and one (1) one hundred square foot (100 sq. ft.) loading platform; and
- (iv) for the proposed 170-200 residential units, the Applicant is required to provide one (1) fifty-five foot (55 ft.) deep loading berth, one (1) two hundred square foot (200 sq. ft.) loading platform and one (1) twenty foot (20 ft.) deep loading space;

Accordingly, the Applicant is required to provide and proposes to include, in total, the following loading facilities:

	REQUIRED	PROPOSED
55 ft.-deep Loading Berth	2	2
200 sq. ft. Loading Platform	2	2
30 ft.-deep Loading Berth	5	4
100 sq. ft. Loading Platform	5	4
20 ft.-deep Loading Spaces	3	3
Totals	10 berths/spaces 7 platforms	9 berths/spaces 6 platforms

Because the proposed development consists of four separate uses that each require loading, the strict application of the regulations results in an excessive amount of loading facilities. The loading berths and spaces to be provided by the Applicant are sufficient for all of the uses within the proposed Building, including the office, residential, retail and grocery users. Although, the Applicant is required to provide seven (7) loading berths and three (3) loading spaces, the Applicant proposes to include six (6) loading berths and three (3) loading spaces. Therefore, the Applicant seeks a variance for only one (1) loading berth (and one (1) platform).

The loading berth and delivery areas will be used by residents when they move in. However, subsequent use by residents will only be occasional and, as such, can be minimized to times which pose the least amount of conflict with the retail and office users and grocery store. As well, the most significant use by the office tenants will be when they move in or out. Although some of the subsequent deliveries to the offices may be daily or occur several times a week, such deliveries will generally be small and will be made by shipping companies like UPS or DHL or by local couriers. Likewise, retail users can be restricted to the use of loading facilities during times which cause the least amount of conflict with the loading needs of the residents and office tenants. Nevertheless, the Applicant plans to provide a significant number of

loading facilities and anticipates conflicts to be rare. Thus, through contractual or operational restrictions, any potential conflict between the loading needs of residents, office tenants, retail tenants and the grocery store tenant will be minimized.

Strict application of the Zoning Regulations would result in a peculiar and exceptional practical difficulty. Providing the additional berth would be impractical given the design of the building and the building footprint, and, furthermore, is not necessary to the use of the Building by the intended occupants.

The requested variance from the loading requirements for the proposed Building will not result in substantial detriment to the public good or the zone plan. The number of proposed loading berths will meet the loading demand for the proposed Building.

XII.

Request for Authorization to Phase Construction of South Tower. The Applicant hereby requests Zoning Commission authorization for the option to phase the development and construction of the South Tower. While the Applicant hopes to be able to construct the South Tower at approximately the same time as it constructs the North Tower, the current challenges in the national and local housing markets and the uncertainty in the credit markets may delay the development of the South Tower. Hence, the Applicant requests approval for the phasing of the South Tower for a period of five (5) years from the date of substantial completion of the North Tower.

XIII.

Witnesses. The following witnesses will testify in support of the Application:

1. Mr. Ramsey D. Meiser, Senior Vice President of Development, or Mr. Alex Nyhan, Development Manager, Forest City Washington
2. Shalom Baranes, FAIA or Mark Gilliland, AIA, Shalom Baranes Associates
3. Robert B. Schiesel, PE, Gorove/Slade Associates, Inc.

XIV.

Conclusion. For the reasons set forth above, Forest City SEFC, LLC, by and through counsel, submits that the Application satisfies all applicable zoning requirements and the burden of proof for the requested Zoning Commission review, special exception and area variances and should be granted.

Respectfully submitted,

GREENSTEIN, DELORME & LUCHS, P.C.

By:


Jacques B. DePuy

By:


Stephanie A. Baldwin